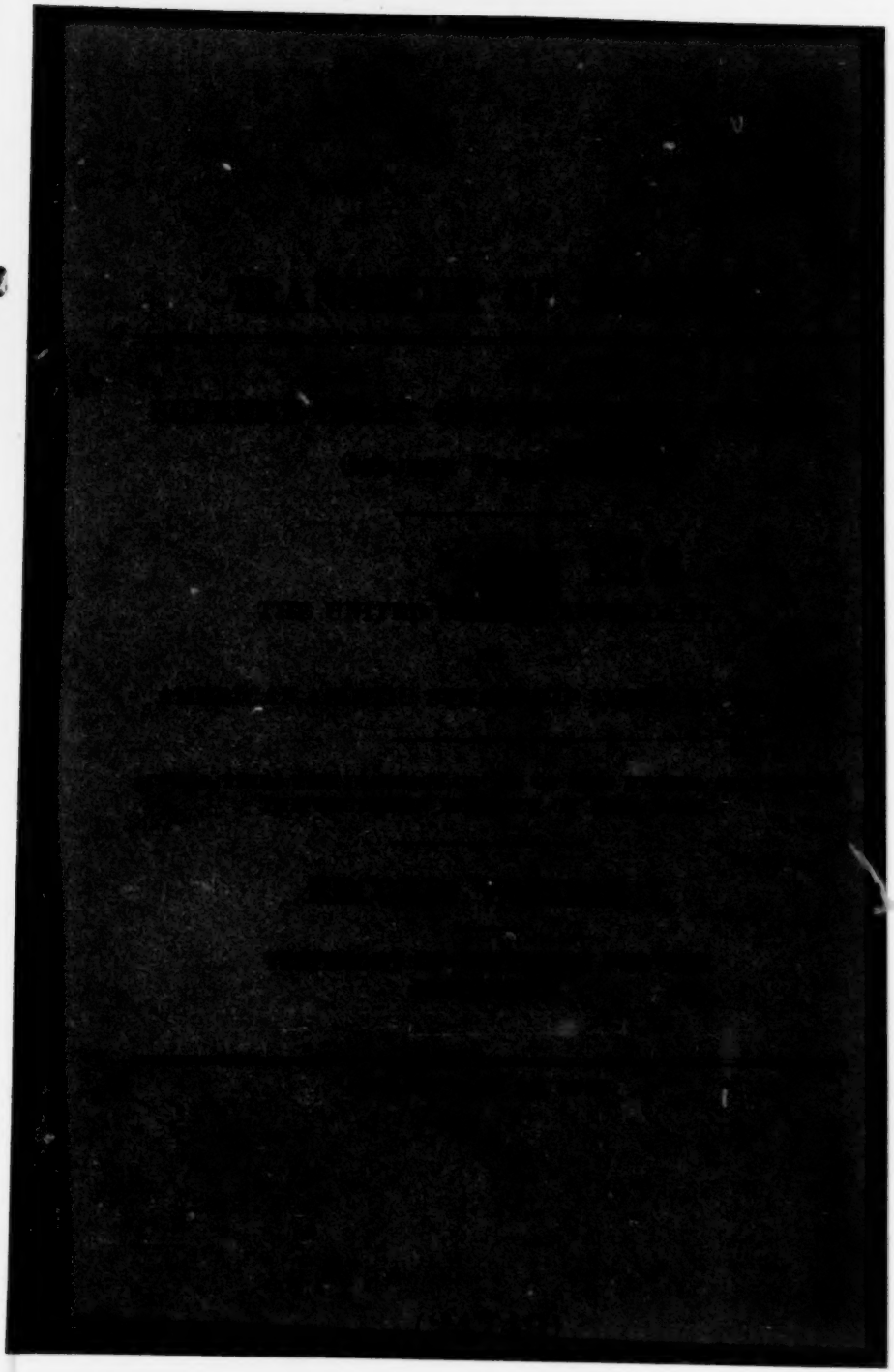

United States District Court

Southern District of New York

UNITED STATES OF AMERICA

vs.

AMERICAN-ASIATIC STEAMSHIP CO., et al.

RECORD—VOLUME I.

TESTIMONY OF WITNESSES FOR THE PETITIONER.

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1

United States District Court

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

AMERICAN-ASIATIC STEAMSHIP COMPANY; WILLIAM BARCLAY PARSONS; JAMES H. T. McMURTRIE; R. H. BLAKE; SHEWAN, TOMES & COMPANY; ANGLO-AMERICAN OIL COMPANY; G. W. PITOU; THOMAS B. ROYDEN; HAMBURG-AMERICANISCHE PACKETFAHRT AKTIEN-GESELLSCHAFT; UNITED STATES and CHINA-JAPAN STEAMSHIP COMPANY; PAUL GOTTHEIL; WILHELM VOLCKENS; THOMAS A. SPARKS; H. W. VOLCKENS; W. L. WALTHER; R. H. GOODWIN; HOWARD HOULDER & PARTNERS (LTD.); ANDREW WEIR & COMPANY; HOULDER, MIDDLETON & COMPANY; WILLIAM BOYD; R. A. SEWELL; BARBER & COMPANY (INC.); LANCASHIRE SHIPPING COMPANY (LTD.); RANKIN, GILMOUR & COMPANY; DODWELL & COMPANY (LTD.); HERBERT BARBER; JAMES BARBER; A. L. HAUTMAN; BUCKNALL STEAMSHIP LINES (LTD.); SKEFFINGTON S. NORTON; JOSEPH T. LILLY; EDWARD M. NORTON; ISTHMIAN STEAMSHIP COMPANY (LTD.); and J. W. RYAN,
Defendants.

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In Equity.

3

4

Before—GILBERT H. MONTAGUE, Esq.,
Special Examiner.

New York, February 28, 1913.

Met at Room 441, Custom House Building.

APPEARANCES:

For the Petitioner ERNEST E. BALDWIN, Special Assistant to the Attorney General; STANLEY D.

MONTGOMERY, Special Assistant to the Attorney-General.

BURLINGHAM, MONTGOMERY & BEECHER, Solicitors for defendants Howard Houlder & Partners, Ltd., Houlder, Middleton & Co., Ltd., William Boyd, Robert A Sewell, Wilhelm Volckens, Paul Gottheil, William L. Walther, Thomas A. Sparks, Hans W. Volckens, Robert H. Goodwin, Hamburg-Americanische Packetfahrt Aktien-Gesellschaft, American Asiatic Steamship Co., William Barclay Parsons and Robert H. Blake.

CHARLES C. BURLINGHAM,

CHARLES BURLINGHAM, of Counsel.

JOHN C. SPOONER, of Counsel for Hamburg-Americanische Packetfahrt Aktien-Gesellschaft, Paul Gottheil, Wilhelm Volckens, Thomas A. Sparks, Hans W. Volckens, William L. Walther and R. H. Goodwin.

SIMPSON, THACHER & BARTLETT, Solicitors for defendants, Barber & Co., Inc., Herbert Barber, James Barber, A. Houtman, Rankin, Gilmour & Co. and Lancashire Shipping Co., Ltd.

T. D. THACHER, of Counsel.

CONVERS & KIRLIN, Solicitors for defendants, Bucknall Steamship Lines, Ltd., Norton & Son, Dodwell & Company, Ltd.

J. PARKER KIRLIN, of Counsel.

JOHN W. GRIFFIN, Solicitor for defendants, Isthmian Steamship Company, Limited, and John W. Ryan.

Hearing had pursuant to the order of the United States District Court for the Southern District of New York, dated the 31st day of January, 1913, and of due notice of said hearing served on the solicitors for all defendants.

Said order reads as follows:

Order Appointing Examiner and Stenographer.

At a Stated Term of the United States District Court for the Southern District of New York, held at the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 31st day of January, 1913.

Present—Honorable JULIUS N. MAYER, Judge.

UNITED STATES OF AMERICA, Petitioner, vs. AMERICAN ASIATIC STEAMSHIP COMPANY, et al., Defendants.	Equity No. 917.

ORDER FOR SPECIAL EXAMINER.

It appearing that the above entitled cause is at issue on the petition, answers and replications heretofore filed.

NOW, upon motion of Henry A. Wise, Esq., United States Attorney, solicitor for the petitioner, it is

ORDERED that Gilbert H. Montague, Esq., of the City of New York and State of New York, be and he hereby is designated and appointed as Special Examiner to take and report to the Court the evidence offered by the petitioner and the defendants respectively, with full authority as such Special Examiner, according to the rules and practice in such case made and provided;

That said Examiner give notice by mail to counsel for the respective parties of his appointment herein, and of the time and place when and where he will attend for the purpose of hearing such testimony as may be adduced and that notice be given by the respective counsel or solicitors to the opposing counsel or solicitors by mail or personally of the time and place of the examination within such reasonable time as the examiner may fix or order in such case.

18 The first hearing is not to be earlier than the fifteenth day of February, 1913.

That the Examiner may, when necessary or convenient for the respective parties, continue said hearings from time to time by order made and entered during any regularly appointed or noted hearing had hereunder;

That said Examiner may in his discretion when necessary or convenient for the respective parties or witnesses, hold such hearings and receive such testimony on behalf of any party at such times and at such places within or without the said Southern District of New York as he may desig-
14 nate and appoint by giving special notice to the respective parties or their solicitors, or by order made and entered at any regularly appointed or noted hearing had hereunder; notice of such time and place of hearing also to be given by the respective counsel or the solicitors to the opposing counsel or solicitors or parties as provided by this order;

That all testimony adduced pursuant hereto may be taken in the usual manner under oath and when completed be reported by such examiner together with all and several the proceedings had before him, to this Court, and filed with
15 the Clerk thereof, in accordance with the rules and practice of this Court.

That the respective parties may from time to time agree as to the time and place for taking proof outside of the Southern District of New York, and may in case the Examiner herein appointed is unable by reason of illness or other cause, to attend at the time agreed upon by such agreement, select such Examiner for such examination. Whereupon such Examiner so selected shall as to such proof and the taking and reporting thereof have all the authority and powers herein given generally to said Gilbert H. Montague,
16 Examiner, and the said Gilbert H. Montague shall act as Examiner aforesaid outside of the Southern District of New York except where there is an agreement among the parties as in the cases provided in this paragraph.

The compensation to be paid said Examiner shall be at the rate of fifteen dollars ($15) per day when in active attendance at said hearing in the City of New York, and at the rate of twenty-five ($25) per day when in active attendance at said hearings at any place outside of the limits of said City of New York, and when attending said hearings outside of said City of New York said Examiner shall have

an allowance in addition to the above of six dollars ($6) per day in lieu of subsistence, together with his actual transportation expenses, said allowances to be made from the date of departure to date of return to said City of New York inclusive. 17

George J. Chambers of New York City is hereby appointed stenographer for taking and transcribing the testimony under the direction of said Examiner.

The aforesaid per diem allowance and expenses of said Examiner and said stenographer shall be shown by monthly accounts, accompanied by vouchers, submitted for the approval of the attorneys or counsel for the petitioner and defendants and will be advanced by the party on whose behalf said testimony is taken, the total amount thereof to be taxed as costs in this action on the termination of the suit, provided the costs are awarded by the Court. A verified copy of such monthly accounts and vouchers as are furnished under the provisions of this paragraph will be filed by said Examiner and said stenographer in the office of the Clerk of said Court. 18

That the petitioner is allowed three months from the fifteenth of February, 1913, or so much thereof as may be necessary to complete the taking of the testimony in chief to be adduced in its behalf and the defendants are allowed ninety days from the closing of the plaintiff's testimony to complete the taking of the testimony to be adduced on their behalf and the Petitioner is allowed a further thirty days from the date of the closing of defendants' testimony to complete the taking of the testimony to be adduced in rebuttal. 19

It appearing to the Court that the interests of justice will be best subserved by permitting this order to continue in full force and effect after February 1st, 1913, and that the effect of this order should not be changed by the rules of practice for the Courts of Equity of the United States promulgated by the Supreme Court of the United States, November 4, 1912, to go into effect February 1st, 1913, therefore it is hereby further 20

ORDERED that this order be and remain in full force and effect as well after February 1st, 1913, as before said date.

Dated, New York, January 31, 1913.

(Sgd.) JULIUS N. MAYER,
Judge.

MR. MONTGOMERY: Mr. Thomas Thacher is unable to be here on account of illness, and the Government consents that he may have the right to enter objections to questions after an examination of the record, and if the examination of any witness is concluded to-day he shall have the right to cross-examine that witness after a reasonable opportunity to examine the record.

THOMAS ASHLEY SPARKS, a witness called on behalf of the petitioner, being duly sworn, testifies as follows: 25

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Sparks, you are a member of the firm of Funch, Edye & Company, are you not? A. Yes, sir.

Q. A defendant in this case? A. Yes, sir.

Q. I believe your answer states, Mr. Sparks, that the firm of Funch, Edye & Company has not throughout the period named in the petition been composed as at present? A. Yes, that is correct.

Q. How long has the firm been composed as it now is? 26
A. I think since 1909 or 1910.

Q. What changes were made in the firm at that time? A. Mr. Hans Walther Volckens was admitted as a partner.

Q. And the other members of the firm had been members? A. No, I became a member of the firm in 1907 and the petition alleges in 1903.

Q. Are those the only two exceptions? A. I think so, I am not quite certain what year Mr. Walther became a partner, but it was after that time.

Q. What is the business of Funch, Edye & Company? A. 27
Ship brokers.

Q. And by that you mean? A. I mean they act as agents of regular lines here, and also as brokers in the chartering of steam and sailing vessels.

Q. Then the term "broker" covers both the acting as broker in the chartering business and acting as agent in the conduct of regular lines? A. Yes, sir.

Q. And as agents you represent the United States & China-Japan Steamship Line, do you not? A. Yes.

Q. How is that line at present composed? A. It is composed of the Indra Line, Limited, of Liverpool, and the Ham- 28
burg American Line of Hamburg.

Q. Thomas B. Royden individually has no interest in the line, as alleged in the petition? A. Thomas B. Royden is the manager of the Indra Line, Limited.

Q. But his only interest in the United States & China-Japan Steamship Line is through the Indra Line? A. So far as I am aware, yes.

Q. Then the Indra Line and the Hamburg American Line are practically partners, conducting the United States & China-Japan Steamship Line jointly? A. That is right.

29 Q. How long has that been the case? A. It has always been the case except at one time the Union Company of Hamburg also had an interest.

Q. Do you know when the United States & China-Japan Steamship Line commenced to do business? A. No, I do not, it was before my time.

Q. Do you know when the Union Line was purchased by the other partners? A. I think it was in 1910, but I am not sure of the date; I could look it up for you.

Q. Do you know when the Union Line was purchased, what the consideration was that was paid by the other
30 partners for the interest of the Union? A. I think I have given you that once before, but I forget the figure now.

Q. Where could that information be obtained? A. I can get it for you very readily.

Q. I wish you would look that up and have it some time? A. All right, sir.

Q. You were at one time connected with the American-Asiatic Steamship Company, were you not, Mr. Sparks? A. Yes.

Q. What was your interest in that? A. I was the Secre-
31 tary and Treasurer from the time it started until I joined the firm of Funch, Edye & Company in 1907.

Q. In what year was it started? A. I think 1902.

Q. In 1902? A. Yes, sir.

Q. You were served with a subpoena *duces tecum*, the first paragraph of which calls for copies of all written or printed communications addressed to shippers in the United States to far eastern ports by your line, etc. Were you able to find any such circulars?

MR. BURLINGHAM: Don't you think that ought to be limited by date somewhat; don't you want to
32 specify what time, what period you have in mind.

MR. MONTGOMERY: Within the period named in the petition.

MR. BURLINGHAM: What is that?

MR. MONTGOMERY: 1903.

MR. BURLINGHAM: It begins 1905 apparently.

MR. MONTGOMERY: We are not entirely clear about all the agreements entered into before that. He has to answer the question whether he has been able to find any.

THE WITNESS: Yes, I found one.

Q. Have you it here? A. Yes, my counsel has it. 83

MR. BURLINGHAM: I do not think this is material, as it is dated in 1904. We produce it, however.

MR. MONTGOMERY: I ask to have that marked for identification.

MR. BURLINGHAM: We wish to have it noted although Mr. Sparks produces this document in response to the subpoena we do not think it can be material to the issues and we shall claim that it should not be used.

Marked Petitioner's Exhibit 1 for identification. 84

Q. Paragraph 2, Mr. Sparks, calls for all letters received by Funch, Edye & Company, or any member or employee thereof transmitting circular notices of deferred rebates. Did you find any letter with which those circulars were sent? A. No.

Q. You did not find any? A. No.

Q. You think there are none in your files? A. I think not.

Q. How do you think these circulars were received by you? A. I think we got them from the printer. 85

Q. You think they were printed here? A. I think they were; that is to the best of my recollection.

Q. That is, printed under the direction of Funch, Edye & Company? A. Yes.

Q. Paragraph 3, Mr. Sparks, calls upon you to produce copies of all minutes of meetings of the New York Conference from January 1, 1903, to the date of the service of the subpoena. How far have you been able to comply with that, Mr. Sparks? A. I want to say this, Mr. Montgomery, as covering paragraphs 3 and 4, that my records have been somewhat depleted by the activities of the grand jury, but 86 those that I have got left I found and I have given to my counsel. Inasmuch as you gave them really no opportunity to look them over, we cannot very well produce them this morning, they have not had an opportunity to look at the documents.

Q. You think with the exception of what was produced before the grand jury and are now in the possession of the Government you have the complete set of minutes for the period covered in the subpoena? A. Yes, all that exist. You asked for them rather earlier than they began, but I think

CUT OFF

87 Q. All that exist? A. Yes, sir.

Q. All for the period during which minutes have been kept? A. I think so.

Q. How long do you think the minutes have been kept? A. Since 1905.

Q. Since 1905? A. Since 1905 or 1904.

Q. And they will be produced later you say, Mr. Sparks? A. Yes, sir.

Q. Paragraph 4 calls for copies of all minutes of meetings of the London Conference? A. I answered paragraph 4 with paragraph 3, the same answer covers them both.

88 Q. I want to ask you in regard to that also, Mr. Sparks, whether you have a full set of the minutes of the London Conference? A. I have no idea whether they are complete or not. They simply send them as a matter of information, and they might or might not send them.

Q. You have not had a chance to examine them to see whether they are complete or not? A. I would not know whether they are complete or not.

Q. But you have a number of them? A. Yes, sir.

Q. And they will be produced later? A. Yes, sir.

89 Q. How about the minutes of the Hong Kong Conference called for in paragraph 5 of the subpoena? A. I have none.

Q. You have searched for those? A. Yes, sir.

Q. And find Funch, Edye & Company have none in their custody? A. They have not.

Q. And as to the copies of minutes of the Singapore Conference called for in paragraph 6? A. I have none.

Q. And by that you mean of course that Funch, Edye & Company have not any? A. No.

Q. Neither the Singapore or Hong Kong minutes are sent to your firm? A. No.

40 Q. What firms in the China trade receive copies of the Hong Kong and London minutes in New York? A. I do not know.

Q. You do not know, for example, when you were with the American-Asiatic Steamship Company, as secretary, whether you received the Hong Kong and London minutes? A. You mean the Hong Kong and Singapore?

Q. Yes, and London, too? A. London I expect, but I cannot remember about the Hong Kong and Singapore.

Q. You are quite sure they had all the London minutes? A. I think so, yes.

Q. But you cannot remember as to Hong Kong or Singa- 41
pore? A. No, I do not even remember whether the Hong Kong and Singapore kept minutes, I do not remember ever seeing them.

Q. Can you recall how you were kept advised, as secretary of the American-Asiatic Steamship Company, of what was done in the Orient by your representatives in conference with others? A. No, I do not recollect, but I think probably we got the advices through London.

Q. Through London? A. Yes, sir.

Q. Paragraph 7, Mr. Sparks, calls for copies of all letters, cables, and other written or printed communications sent 42
by the mouthpiece of the associated lines agents at New York to any steamship company or officer, etc., in Europe. Now that involves a question as to paragraph 7 of the Eastward Agreement, Exhibit 1 of the Petition, that reads as follows: "That in order to avoid unnecessary expense and possible delay, the respective parties shall nominate one of the firms of agents in New York to act for the time being as the mouthpiece of the Associated Agents; and also shall appoint one of their own number to act in a similar capacity on this side. All cabled enquiries regarding matters of policy, im- 43
portant contracts, etc., shall be communicated to the respective parties through this channel, and their replies forwarded in the same way." That Eastward Agreement was put into effect in April, 1905, and has remained in effect until now, has it not, Mr. Sparks? A. Yes.

Q. That is correct, is it? A. Yes, sir.

Q. And that paragraph I take it, Mr. Sparks, is in force? A. Yes.

Q. And that means then instead of having a secretary, as some of the Conferences have, you appoint one firm of agents here to conduct the correspondence, and that similarly one 44
firm of principals in London is appointed to conduct the correspondence at that end? A. That has been the custom, yes, sir, we have done it in turn.

Q. How are those turns arranged, Mr. Sparks? A. Each agent and the corresponding principal takes it for three months.

Q. And during that period your meetings in New York take place in the office of the one who is conducting the correspondence? A. Yes.

Q. Acting as the mouthpiece? A. Yes.

GE CUT OFF

45 Q. Are minutes of the meetings furnished by that one in whose office the meetings are held to the other agents here? A. Yes.

Q. So that they have a complete set of the minutes, each agent here? A. If they keep them, yes.

Q. If they keep them? A. Yes, sir.

Q. And copies of the cables are kept? A. Yes.

Q. So that each firm has a complete set of those? A. I expect so.

Q. And that has been done throughout the time that Exhibit 1 has been in effect? A. Yes.

46 Q. You were asked to produce copies of all letters, cables, etc., going back to the subpoena, that have been sent or received in pursuance of that paragraph 7 of the Eastward Agreement. To what extent have you been able to comply with that paragraph, Mr. Sparks? A. I must answer that in the same way as to paragraphs 3 and 4, that I have found a large mass of documents that I have turned over to my counsel, and they are looking them over to see if they are the ones that are required.

47 MR. BURLINGHAM: I would like to say, Mr. Montgomery, that we object to the vagueness and generality of this paragraph No. 7, and the same applies to No. 8, and unless you are prepared to be more specific we shall have to instruct the witness that pending an application to the Court he should not produce any letters, cables, or written or printed communications pursuant to those calls.

MR. MONTGOMERY: You do not mean that?

MR. BURLINGHAM: Yes, we do; it is too general.

48 MR. MONTGOMERY: It is the same thing as though you had a secretary here and a secretary in London, and we ask for the communications passing back and forth between those secretaries. Clearly we are entitled to it, Mr. Burlingham. You can make your objection.

MR. KIRLIN: Practically you simply are serving your notice to produce all correspondence that passed between New York and London for a period of seven years?

MR. MONTGOMERY: Yes.

MR. KIRLIN: I do not think there is any rule of law that authorizes a subpoena in any such general terms as that. 49

MR. MONTGOMERY: I am constrained to differ. All this correspondence is carried on pursuant to what we allege to be a conspiracy. We are not asking for a letter that is not alleged in this petition to be written in pursuance of and a part of a combination and conspiracy and pursuant to a paragraph of this agreement that is a part of the conspiracy.

MR. KIRLIN: It must, of course, be manifest to you many things that passed could not by any possibility be material. You are asking for everything that has passed; I think that is much too general. 50

MR. SPOONER: You do not qualify it by any phrase.

MR. MONTGOMERY: (Reading from the subpoena.) "In pursuance of paragraph 7."

MR. KIRLIN: And 8 also.

MR. MONTGOMERY: I think we have an undoubted right to everything asked for in this paragraph, but I will waive this paragraph until this afternoon's session. 51

MR. BURLINGHAM: And the same as to paragraph 8?

MR. MONTGOMERY: And the same as to paragraph 8.

Q. Paragraph 9, Mr. Sparks, asks you for the letter with which you received Petitioner's Exhibit 1? A. I should like to answer that paragraph and Nos. 10 and 11 at the same time and hand you this letter (handing paper to Mr. Montgomery).

MR. MONTGOMERY: I ask to have that marked for identification. 52

Marked Petitioner's Exhibit 2 for identification.

Q. You say then, Mr. Sparks, that these agreements all came with this letter from the Indra Line, signed by T. B. Royden, is it? A. T. B. Royden, per P. L. Rooper.

Q. I notice, Mr. Sparks, that the letter says "Also 30 offers of eastward and westward pooling accounts and particulars of time sheets." Can you find those time sheets and particulars of the pooling account, and produce them? A. I was

E CUT OFF

53 not connected with the firm of Funch, Edye & Company at that time, so I have no personal knowledge of whether they ever came. If they did I take it they went into consumption and are not to be found.

Q. You think those that accompanied that letter have been used up? A. I think so.

Q. And they have not been replaced by other supplies of the same kind? A. Not as far as I know.

Q. You think you have not any now in your possession? A. No, I do not think we have.

Q. Would you mind looking to see, Mr. Sparks, if you
54 have? A. Yes, sir; I would be glad to.

Q. I would like them if you have them? A. Yes, sir.

Q. The time sheets and pooling? A. Yes, sir.

Q. Did you succeed in finding, Mr. Sparks, the letter which accompanied the pooling rules, Exhibit 4? A. Yes, I found a letter that mentioned it, but it dealt with a number of other matters that were not connected with that subject, and I turned it over to Mr. Burlingham also to look at, and I think he has not had a chance to see that yet.

MR. BURLINGHAM: We will bring it this afternoon
55 or at the next hearing, whenever it is.

Q. Mr. Sparks, have you your answer to the petition? A. Yes.

Q. I suppose you signed that answer or authorized it to be signed? A. Yes.

Q. I call your attention to your answer in regard to the Westward Agreement. You state practically, do you not, Mr. Sparks, that a westward agreement was entered into at or about the time alleged in the petition, that is in paragraph 2 of Article IV of the petition, but that Exhibit 2 is
56 not a copy of it, that is the gist of your answer, isn't it? A. Yes.

Q. And that part of the answer was authorized by you? A. Yes.

Q. So that you are sure, are you, that Exhibit 2 is not a copy of the Westward Agreement that was entered into at about that time? A. I furnished you with that copy of the Westward Agreement, and I did it in good faith.

Q. I do not doubt that at all, Mr. Sparks. A. Supposing it was the actual agreement. I since learned that although

practically the same thing it is not the exact document that is in effect. 57

Q. That is the copy you furnished me, isn't it (handing paper to witness)? A. Yes.

MR. MONTGOMERY: I ask to have that marked for identification.

Marked Petitioner's Exhibit 3 for identification.

Q. You say this is not exactly the thing that is in effect? A. I am so informed.

Q. What is this then, Exhibit 3? A. I imagine it must have been an advance proof or an agreement that was subsequently superseded by an agreement in which there was some minor change. 58

Q. I notice that this Exhibit 2 of the petition is not dated, and you are not clear then, Mr. Sparks, as to whether this agreement is the agreement that was once in effect, or whether it was ever in effect at all? A. It may be only an advance proof of the one that is in effect, I do not know.

Q. But you are not at all sure about that? A. No, sir.

Q. You do not know anything about that? A. No, sir.

Q. Who would in New York, anybody in your firm? A. No. 59

Q. I mean, in the American-Asiatic Steamship Company? A. Well, I cannot answer for that, but they would be more likely to know it.

Q. And what individual there? A. Mr. Blake.

Q. Mr. R. H. Blake? A. Yes, sir.

Q. A defendant in this suit? A. Yes, sir.

Q. In ascertaining, Mr. Sparks, that this Exhibit 2 to the petition is not the correct one, I assume you found the one that was a correct one? A. No, I did not, I was informed by my counsel that it was not the one that was correct. 60

Q. The pooling agreement, Exhibit 3 to the petition, your answer says in regard to that on page 6: "These defendants deny each and every allegation contained in subdivision 3 of Article IV of the petition, except that they admit that a so-called pooling agreement was executed and put into effect except as modified." This pooling agreement, Mr. Sparks, is the copy you furnished me a year or two ago, is it not (handing document to witness)? A. I think so, it looks like it.

Q. That is what appears in the petition. You have read the petition in this case? A. Yes, sir.

PAGE CUT OFF

61 Q. That appears to be a copy of this pooling agreement that you handed me? A. Yes, sir.

MR. MONTGOMERY: I ask to have this marked for identification.

Marked Petitioner's Exhibit 4 for identification.

Q. I take it, Mr. Sparks, that your answer means that a pooling agreement was entered into, but this is not it precisely? A. I think we denied it most strenuously, because it was alleged in the petition it was in furtherance of a combination and conspiracy.

62 Q. Then your answer would be, Mr. Sparks, that a pooling agreement was entered into on the date alleged in the petition, or at about that time, and that Exhibit 3 is a substantially correct copy thereof, but that it was not entered into in pursuance of any combination or conspiracy? A. Yes, that is right.

Q. In your answers to the pooling rules, you say that Exhibit 4 purports to be a copy of said pamphlet, after saying that a general revision was published, etc. I show this pamphlet entitled "Pooling rules." That is the one you

63 furnished me, isn't it (handing pamphlet to witness)? A. This is the one I gave you, yes.

Q. Before the petition was prepared? A. Yes.

Q. And that is the one of which Exhibit 4 of the petition is a copy, is it not? A. I have not compared it, but I take it it is the same thing.

Q. At any rate, this one is the one that you understand is in effect now? A. Yes, subject to any modifications that may have been made since then. I am not very well posted on the question.

Q. But it is, however, the last published revision of the

64 pooling rules? A. That we have.

Q. That you have? A. Yes, sir.

Q. And you think the last one that has been made? A. So far as I know, yes.

MR. MONTGOMERY: I ask to have this pamphlet marked for identification.

Marked Petitioner's Exhibit 5 for identification.

Q. Who would know more about that here in New York? A. I think Mr. Blake or Mr. Barber.

Q. Which Mr. Barber? A. Either of the Barbers.

Q. Mr. Herbert Barber or Mr. James Barber? A. Yes. 65

Q. Mr. Sparks, you are familiar generally with the organization of the different lines engaged in the traffic between New York and China, not only your own but in a general way with all the lines? A. Perhaps not very exactly with the make-up of the other lines.

Q. But you have a general knowledge of them all? A. To some extent, yes.

Q. Are there any principals engaged in that traffic who have not been named as defendants in this petition? A. That is rather a leading question. I do not believe I am competent to answer that. I have not got a list of them. 66

Q. Take your own line, for example. We have named Mr. Royden as a defendant. As a matter of fact the Indra Line ought to be named as a defendant, ought it not, I mean to say it is the principal? A. Yes, I think they are the principals.

Q. They are in the same position as the Hamburg-American? A. Yes, I think so.

Q. How about the American-Asiatic? That American-Asiatic Line is run substantially as the petition alleges, is it not? A. Which paragraph is that in? 67

Q. Page 2? A. Hadn't you better ask the American-Asiatic about that? A. I am not *au fait* with their affairs now, you understand.

Q. Are you advised in a general way whether there was anybody else in the Asiatic Line, or is it run by the American-Asiatic Steamship Company? A. So far as I know it is run by the American-Asiatic Steamship Company.

Q. Do you know whether Shewan, Tomes & Company are a partnership or a corporation? A. Yes, they are a partnership.

Q. You are sure of that? A. They were the last I knew of it. 68

Q. Do you know who compose the firm? A. Robert Shewan and Charles Alexander Tomes.

Q. Where are those people living? A. Hong Kong.

Q. Hong Kong, China? A. Yes, sir.

Q. How about the Anglo-American Oil Company, mentioned on page 3? A. I do not know.

Q. Do you know whether they alone conduct the Anglo-American Oil Line, or whether there is any other interest? A. I do not know anything about them.

PAGE CUT OFF

69 Q. Do you know whether they have an agent here in New York at the present time? A. I do not know what their make-up is at all.

Q. How about the United States & China-Japan Steamship Line? You have testified, I believe, that Thomas B. Royden is not as an individual a partner in that line, but that the Indra Line Limited is? A. As far as I know that is correct.

Q. And that is a corporation organized under the laws of the Kingdom of Great Britain, with its principal office where? A Which is?

70 Q. The Indra Line, Limited? A. The principal office is at Liverpool.

Q. And it is a British corporation? A. So far as I know, yes.

Q. And the defendant Hamburg-Americanische Packetfahrt Aktien-Gesellschaft is commonly called the Hamburg-American Line, is it, and is a corporation organized under the laws of Germany? A. I do not know what the German laws are.

Q. You do not know what the Hamburg Line is and

71 whether it is a corporation or a partnership, or what? A. I do not.

Q. At any rate, it is a corporation, is it not? A. I do not know. Yes, I suppose it is, if it is a company.

Q. Who are their representatives here? They have an office here?

MR. SPOONER: The answer admits it, doesn't it?

MR. MONTGOMERY: I think so.

MR. BURLINGHAM: The other defendants do not admit it; the Anglo-American Oil Company does not admit it.

72

Q. I ask you, Mr. Sparks, who the representatives of the Hamburg Line, other than Funch, Edye & Company, are in New York? A. They have their own office, and Dr. Bunz, and Vice Directors William G. Sickel and J. P. Meyer are in charge of it.

Q. Who is Dr. Bunz? A. A reputable German citizen, I believe.

Q. What does he do in connection with the business, what is his position here? A. He is their representative.

PAGE

Q. Is he in charge, or are Sickel and Meyer in charge here? 73
A. I do not know.

MR. SPOONER: That is not the way to prove that, is it?

Q. You have to look to the Hamburg-American office here, haven't you, in some matters, submit questions to them, and get directions from them from time to time? A. Yes, I sometimes call on Dr. Bunz, but if I wish to talk about business matters I usually go to Mr. Sickel.

Q. Mr. Sickel is the man? A. Yes, sir.

Q. You do not know whether Mr. Sickel or Dr. Bunz is 74
the superior in charge down there? A. I think Dr. Bunz is the head.

Q. Is he the head of the New York office? A. Yes, I think so.

Q. You do not know what his exact title is? A. I think I have seen it on the head of a letter, but I do not know.

Q. Isn't it Resident Director? A. I do not remember.

Q. Do you know anything about the organization of the American Oriental Line in detail? A. I have always understood it was composed of Andrew Weir & Company, Houlder, 75
Middleton & Company, and Howard Houlder & Partners.

Q. Mr. Sewell would know more about that, wouldn't he? A. Mr. Sewell would know all about it.

(The further examination of this witness is suspended.)

ROBERT ARMSTRONG SEWELL, a witness called on behalf of the Petitioner, being duly sworn, testifies as follows:

DIRECT EXAMINATION by Mr. Montgomery:

76

Q. Mr. Sewell, what is your business? A. Ship broker.

Q. With what firm? A. Houlder, Weir & Boyd.

Q. Is that a firm or a corporation? A. A corporation.

Q. That is a corporation organized under the Laws of what State? A. New York.

Q. And its home office is in New York? A. Yes, sir.

Q. What position do you occupy with that corporation? A. Vice-President.

Q. And have been such for how long? A. Since the 1st of January, 1912.

CUT OFF

77 Q. When was that corporation organized? A. January, 1912.

Q. What corporation, if any, did it succeed? A. Howard Houlder & Partners.

Q. Howard Houlder & Partners, Incorporated? A. Yes, sir.

Q. That was a New York corporation? A. Yes, sir.

Q. And Houlder, Weir & Boyd was organized and took over the business of that corporation? A. Yes, sir.

Q. In January, 1912? A. Yes, sir.

78 Q. Were you connected with this former corporation? A. Yes, sir.

Q. Howard Houlder & Partners, Incorporated? A. Yes, sir.

Q. In what capacity? A. Vice-President.

Q. How long had you been Vice-President of that? A. I am not certain, I think about two years.

Q. About two years? A. Yes, sir.

Q. Had you been connected with them in some other capacity before that? A. No, in no other capacity.

79 Q. Howard Houlder & Partners, incorporated, was for some time before it was succeeded by Houlder, Weir & Boyd, Incorporated, the agent of the so-called American Oriental Line, was it not? A. Yes, sir.

Q. Do you know how long it represented that line? A. From the commencement, which I think was in 1905.

Q. 1905? A. I think so. That was, of course, prior to my joining that firm, and I am not quite sure of the date.

Q. Who composes the American Oriental Line? First I will ask you, Houlder, Weir & Boyd are not the owners of that line at all, are they? A. Merely agents.

Q. You are merely the steamship agents? A. Yes, sir.

80 Q. And you represent them on a commission? A. On a commission basis, yes, sir.

Q. And you are paid a certain commission on the outward freight from New York to China and other parts in the far East? A. Yes, sir.

Q. The freight is paid here on outgoing freight, isn't it? A. The bulk of it.

Q. And is collected here on the incoming freight also? A. Part of it, yes, sir.

Q. And you get a commission on that, too, you collect

that on a commission basis, do you, or is that gratuitous? 81
A. We have a commission.

Q. You have a commission on that, too? A. Yes, sir.

Q. Your corporation has no interest in the line other than as agents? A. No, sir.

Q. Who are the principals in that line? A. Houlder, Middleton & Company, Limited, Andrew Weir & Company, and the Prince Line.

Q. The Prince Line, Limited? A. Yes, sir.

Q. That is a British corporation? A. Yes, sir.

Q. They are the principals in this? A. Yes, sir.

Q. And those are all? A. Yes, sir. 82

Q. Of the owners? A. Yes, sir.

Q. How long has the line been so composed—ever since its organization as a line? A. Yes, I think so.

Q. The Prince Line, Limited, is a corporation? A. Yes, sir.

Q. What is the other one? A. Houlder, Middleton & Company.

Q. That is a partnership? A. No, sir, a corporation, Houlder, Middleton & Company is a corporation.

Q. Organized under the laws of what country? A. Why, 83
Great Britain.

Q. With its principal office where? A. London.

Q. Do you know who the officers are of that company? A. No, sir.

Q. Andrew Weir & Company, is that limited? A. No, sir, that is a partnership.

Q. That is a partnership? A. Yes, sir.

Q. Who are those partners? A. I could not say; Andrew Weir.

Q. Where does he live? A. In London.

Q. And who else? A. William Weir, and there are other 84
partners, I do not know them.

Q. Where does William Weir live? A. In London.

Q. Do you know whether any of them live in this country? A. No, sir.

Q. Do they come here occasionally? A. Yes, sir.

Q. Are they coming here soon? A. They do not advise me of their movements.

Q. There are none of them here now, are there? A. Yes, Mr. Andrew Weir is here now.

E CUT OFF

85 Q. He is here in town now? A. No, sir, on the Pacific Coast.

Q. Will he be in New York soon? A. That I do not know; I think probably he will come back this way.

Q. If we should want him as a witness I suppose he would be glad to attend? A. I am not here to answer for Mr. Weir.

Q. Mr. Sewell, you are asked in this subpoena for copies of all the minutes of meetings of the New York Conference? A. I might explain as I did to Mr. Joyce, I only got this at half-past two.

86 Q. I understand, but I want to ask you whether you have the things that are called for here, that is all, the minutes of the meetings of the New York Conference. Have you those in your custody for the entire period asked for in the subpoena? A. I am not so certain that all of those are there. We have some, but whether complete I could not say.

Q. Have you any of the minutes of the London Conference called for in paragraph 2? A. We have some, but I could not say whether complete; I could not say whether we get them all or not.

87 Q. How about the minutes of the Hong Kong Conference? A. I have no knowledge of that.

Q. You do not know whether you have any or not? A. I know we have not any.

Q. And the Singapore Conference? A. The same answer, I do not know anything about it.

Q. Paragraph 5 calls for the letters sent from the mouthpiece of the agents in New York to the mouthpiece of the principals in Europe. We will not press you for paragraphs 5 and 6 at the present time. A. That is all there is to it.

Q. By the way, Mr. Sewell, your corporation, as agents, 88 for the American Oriental Line, makes certain contracts, does it, with shippers of goods to the Orient? A. Yes.

Q. What is the nature of those contracts, that is to say, are they contracts covering shipments for a period of time? A. Yes.

Q. And exclusively by the American Oriental Line, or by the American Oriental Line and other lines? A. And other lines.

Q. For what period of time do they usually cover? A. Why, it might be for two or three months, it might be for five or six, nine months, or a year.

Q. Do you ever make any other kind of contract, that is, a contract for given quantities to go by certain boats? A. Yes, verbally. 89

Q. Those are verbal? A. Yes, sir, more often.

Q. But the others are written contracts? A. Yes, sir, where they cover a period.

Q. Any period of time at all is put in writing? A. Yes, sir.

Q. I have not asked for those in the subpoena, Mr. Sewell, and I wish that you would get the contracts that you have in your possession covering, say, periods of three months and longer, I mean not only the current contracts, but all of them; I think you can probably furnish us copies of those, from 1905 on, from the organization of the line? A. I doubt very much whether we keep those. When the contract expires I think they are destroyed, but I am not very sure of that, and I will be pleased to look it up. 90

Q. You have a number of contracts that are running now, current contracts? A. Yes.

Q. You can get all of those? A. Yes, sir.

Q. I understand you to say that the American Oriental Line enters into contracts with shippers on behalf of itself and other lines in the Conference? A. No, sir, the contracts are made out in our name. 91

Q. But they provide for carriage by your line and others? A. It is generally understood that the shippers have the privilege of shipping by the other lines.

Q. You mean it is understood aside from the contracts in a collateral understanding— A. No.

Q. It is expressed in that contract? A. It is understood by the shippers generally.

Q. I understand, the contracts will speak for themselves when you get them of course, but I want to find out before asking you to produce some other copies. Then you enter into a contract which on its face provides that the shipper shall ship his goods by that line, that nominally provides he shall ship exclusively by that line; he has the privilege, however, instead of doing that of shipping by your line and the other lines in this Conference, is that right? A. Yes. 92

MR. BURLINGHAM: I think, Mr. Montgomery, you should not interrogate about the contents of the contracts.

E CUT OFF

93 Q. What I want is this, I suppose that other firms similarly, other agents in New York similarly make contracts nominally in the names of their lines and nominally providing that their lines alone shall be patronized by that shipper, but by the same sort of understanding the shipper is permitted to ship by your line and others? A. Yes.

Q. And each of the lines in the Conference make those contracts? A. Yes, sir.

Q. What I want to ask you is do you have copies of all the contracts that are made by other lines, as well as the originals of the contracts made by your line? A. Yes.

94 Q. Do you understand what I mean? A. Yes.

Q. You have those? A. I do not know that we have them in our possession to-day. As I say, when these contracts expire I am sure they are destroyed. We may have some on hand.

Q. I wish you would get as many of the contracts made by your line and as many of the copies of contracts made by other lines in which you participate in the carriage, as you can before the next hearing, Mr. Sewell? A. I want to explain. I do not get a copy of the contract, I am simply ad-

95 vised a contract is made.

Q. You are only advised? A. Yes, sir.

Q. And some sort of memorandum I suppose of its terms? A. The rate, and the time of shipment, that is all.

Q. Only the line making the contract has the contract? A. Yes, sir.

Q. He and the shipper? A. Yes, sir.

Q. Those are the only ones? A. Yes, sir.

Q. Who are the shippers with whom contracts of that sort are made—is the Standard Oil one? A. Yes, sir, occasionally.

96 Q. The Steel people one? A. Yes, sir.

Q. The International Harvester one? A. No, sir.

Q. By the Steel people I mean the United States Steel Products Company? A. Yes, sir.

Q. You deal with them? A. Yes, sir.

Q. And make the contracts? A. Yes, sir.

Q. Do you make any contracts with the International Harvester Company? A. No, we have no contracts with them to my knowledge. You are referring to our firm now as making contracts?

Q. I am referring to the Conference Lines. In the first

place I will ask you this: You say you do make contracts with the Standard Oil Company and with the Steel Products Company ; you have answered that you did make contracts with them, haven't you? A. Let me understand that. 97

Q. I asked you some time ago, I said do you make contracts with the Standard Oil and the Steel Products Company, and you replied yes? A. Yes.

Q. And you understood me to mean the Conference Lines, not necessarily your own line? A. I mean the Conference Lines make contracts.

Q. As a matter of fact, these are not negotiated or made by the American Oriental Line, are they? A. For the time we act as mouthpiece. 98

Q. During that period you do? A. Yes, sir.

Q. Where are the records of those? Do I understand you correctly, Mr. Sewell, that for the time that you act as the mouthpiece of the Conference you negotiate a contract, for example, with the Standard Oil; you preserve the original or a copy of that contract; and no copy is given to anybody else? A. Yes, with relation to the Standard Oil we do furnish them with copies of the contract.

Q. Then they all have copies of those? A. Yes, sir. 99

Q. But with the average shipper you would enter into a contract and you would have a copy of it? A. Yes.

Q. Then no one else would have a copy but you and the shipper? A. That is right.

Q. Then that would be so for a period of three months, you would go on and negotiate these contracts and you and the shipper have the copy, is that right? A. Yes, sir.

Q. How long do you have them as to time? A. For three months. I do not know whether I follow you or not. You say first as to the Standard Oil do we make contracts, and I said yes. 100

Q. As to the Standard Oil you do give copies to the others; I understand that? A. Yes.

Q. But as to the other shippers generally, when you make a contract with the mouthpiece of these lines, not as the mouthpiece, but you make the contract when acting for these lines? A. Not necessarily the time I am acting as mouthpiece.

Q. Then the party that acts as the mouthpiece does not necessarily make the contract in his own name for the period? A. Yes.

GE CUT OFF

101 Q. I am afraid I do not understand you. Just explain in your own way how these contracts are made? A. You made special reference to the Standard Oil Company. Those are ordinarily contracts which are made by the firm acting as mouthpiece. Any firm, however, may make contracts, whether acting as mouthpiece or not, in which case those contracts would be made in the name of the firm, for instance, our own firm, and particulars furnished, not copies of the contracts, but particulars furnished to the agents.

Q. But certain firms are left to be negotiated with by the mouthpieces of the lines? A. Yes, sir.

102 Q. And the Standard Oil is one? A. Yes, sir.

Q. What others—the Steel Products Company? A. The Steel Products are made in London.

Q. They are made in London? A. Yes.

Q To get back to the International Harvester Company, does the International Harvester Company ship by your lines, do you carry harvesting machinery of their manufacture? A. No.

Q. You do not carry any of their traffic? A. I am trying to recall, I think we have one shipment, but it seems to me—

103 I do not know whether we carried it or not, but I think a small lot was carried to Vladivostok.

Q. So they do not ship there at all? A. No.

Q. To amount to anything? A. No.

Q. What other large firms do you make contracts with? A. The China and Japan Trading Company.

Q. And the American Trading Company? A. Yes.

Q. Some of these Japanese firms, Mitsui? A. Mitsui, Takita.

Q. When those contracts are made with these firms, do you as a rule get authority to negotiate them specifically, for each

104 specific contract, from your Conference here? A. Yes, we consult.

Q. And the Steel contracts you say are made in London? A. Yes.

Q. The Standard Oil are made by the mouthpiece here, I suppose upon authority obtained from London? A. No, we consult here.

Q. You consult here? A. Yes, sir.

Q. And fix the terms yourself in this conference here? A. Yes, sir.

Q. Now, I wish, Mr. Sewell, you would get me all the con-

tracts that you have, and all of the minutes and notes relating to contracts, and the terms of them with the firms that you have named, for the next meeting? A. I will endeavor to. 105

Q. What I mean by that is, you have said where you do not get a copy of the contract you do get a statement in a general way what the terms are; that is the statement I mean by the minutes and the notes, or an abstract or whatever you call it? A. All right, sir.

Adjourned to a date to be agreed upon.

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New York, March 27, 1913.

Met pursuant to notice.

Present—GILBERT H. MONTAGUE, Special Examiner.

APPEARANCES:

Same as before.

Counsel had an informal discussion as to the production of documentary evidence.

Adjourned to Thursday, April 3, 1913, at 10:30 A. M. 107

New York, April 3, 1913.

Met pursuant to notice.

Present—GILBERT H. MONTAGUE, Special Examiner.

APPEARANCES:

Same as before.

MR. BALDWIN: May it please the Court and counsel, there are some imperfections in the allegations in this record concerning parties, and they are, I should think, easily curable by stipulation, and I would like to have an understanding on the record to the effect that the petition may be amended at any time before final hearing or upon final hearing *nunc pro tunc*, so that the evidence in the case may conform 108

AGE CUT OFF

117 MR. KIRLIN: You mean the stockholders and officers of Barber & Company?

MR. MONTGOMERY: Yes.

A. We own about 55 per cent.

Q. So that all told Barber & Company, Inc., and its officers and stockholders, own 95 per cent. approximately? A. No, no.

Q. You own 55 per cent., including what the corporation owns? A. Yes, sir.

Q. So you control those two corporations? A. Yes, sir.

118 Q. What is the total capital stock of the New York & Oriental Steamship Company? A. The capital stock is 120,000 pounds, of which about 80,000 pounds has been issued. I can give you the figures exactly.

MR. BALDWIN: That is approximately correct?

THE WITNESS: Yes.

Q. How many ships does that company own? A. They own three ships.

Q. What are they? A. The Satsuma, the Shimosa and the Suruga.

119 Q. Are they all freight boats or are some of them passenger boats? A. They are all freight boats.

Q. What is the tonnage of the Satsuma? A. They are all about the same tonnage; their gross tonnage is about 3,400 tons.

Q. What is the dead weight? A. About 7,300 tons each.

Q. What is the capital stock of the La Plata Steamship Company, Ltd.? A. I cannot tell you; I will give you the exact figures when I get to the office.

Q. Can you tell me approximately? A. I think the stock of that company is about 20,000 pounds. They only run one 120 steamship, and it has nothing to do with this suit at all.

Q. Nothing to do with this suit at all? A. No, sir.

MR. BALDWIN: You mean it has never been in the Asiatic trade?

THE WITNESS: No, sir.

Q. Are the Satsuma, Shimosa and Suruga the only ships, in which Barber & Company has any direct or indirect ownership, that operate in the area between the United States and the far East? A. At present, but during the time of this

suit we have had steamers under our time charter that have run in and out, we are time charterers in that case. 121

Q. You mean you charter steamships? A. We have had several on time charters.

Q. You have chartered them from the owners? A. Yes, sir, but we run our ships wherever we like and they are sent occasionally on this far eastern business.

Q. Can you give us a list of the ships that you have employed on time charters and used in this traffic during the period named in the petition? A. I can; I cannot do it now from memory.

Q. You can produce such a list? A. Yes, sir. 122

Q. I wish you would at the next hearing. A. Very well, sir.

Q. Who owns the remaining 45 per cent. of stock in the New York & Oriental Company? A. Various shareholders.

Q. Where do they live? A. Some live in the United States and some live in England, and some live in France.

Q. Are there any large shareholders in the United States? A. No, except ourselves.

Q. Who is the principal shareholder in England? A. Well, I think Dodwell & Company, Ltd.

Q. A defendant in this suit? A. Yes, sir; they own some shares. 123

Q. Do you know how much they own? A. I think they own 50 shares of 100 pounds each, that is 5,000 pounds.

Q. They own about 5,000 pounds? A. Yes, sir.

Q. About what proportion of the balance of that is owned by non-residents of the United States? A. Oh, I should think about perhaps 30 per cent. owned out of the United States and the balance owned here, about 15 per cent. through American stockholders besides ourselves. If it will be satisfactory I can give the entire list. 124

Q. Isn't it a fact, Mr. Barber, that the purpose of the organization of the New York & Oriental Steamship Company, Ltd., was to enable Barber & Company, Inc., to practically own ships flying the British flag? A. That is so, yes, sir.

Q. You could not do that under the British laws directly as an American corporation? A. We could, as an American we could because one of our partners is a British subject and we could work it that way.

PAGE CUT OFF

125 Q. What do you mean by one of your partners? A. One of our stockholders.

Q. Is a British subject? A. Yes, sir.

Q. Would that entitle an American corporation to own a ship flying the British flag? A. He could own our stock in the British ship as a trustee for us.

Q. My question was whether it was not for the purpose of devising a scheme by which you could indirectly do something that the law would not permit you to do directly, and your answer was that there was another indirect method by which you could do it, is that it? A. I do not quite under-
126 stand why the law does prohibit us doing such a thing, I do not know that it does; an American corporation can hold stock in a British ship, in a British corporation owning a ship.

Q. It cannot own the ship, can it? A. Not own the ship, no, sir.

Q. And that was the purpose, wasn't it? A. Yes, that was the purpose.

Q. Mr. Barber, Barber & Company, Inc., is the agent of the line known as the Barber Line in the traffic between here
127 and the far East, is it not? A. They are the owners of the line.

Q. What do you mean by the owners of the line? A. We have the proprietary right of that line, that is our line; no ship can load on the Barber Line except with our consent; it is a trade-mark, if you like it that way.

By Mr. Baldwin:

Q. Mr. Barber, is there a line or a company or an organization known as the Barber Line, separate and distinct from Barber & Company, Inc.? A. There is no corporation or
128 company, no.

Q. What constitutes the Barber Line as such? A. The steamers that we load from here to the ports in the far East.

Q. Steamers belonging to what corporations? A. Any corporations we like to put in.

Q. Any corporations? A. Yes, sir, any corporations.

By Mr. Montgomery:

Q. As a matter of fact then, Mr. Barber, you under the agreement, the traffic agreement, Exhibit 1, Eastward, are entitled to a certain number of sailings in this area? A We

Q. And that right, whatever right is given by that agreement, is the right to Barber & Company, Inc.? A. It is. 179

Q. And no other parties have any interest or right than yourselves in your loadings?

MR. KIRLIN: "Interest" is a little broad.

Q. I mean by that, Mr. Barber, when this agreement, Exhibit 1, was executed the interest of Barber & Company, Inc., appears to have been the right consented to by the other lines to 13 sailings per year from the United States to far eastern ports? A. That is so.

Q. And that right was the exclusive property of Barber & Company, Inc.? A. It was. 180

Q. None of the other companies, for instance, the Lancashire Shipping Company, Ltd., Rankin, Gilmour & Company, and so on, none of those companies had any right in those sailings except as you subsequently gave it to them, is that right? A. That is right, sir.

Q. And you are under no continuing obligations to recognize them in this line at all? A. No, sir. Perhaps I might say when I say "no sir" I will say no legal right; there is a moral right—parties who have been working with us for a good many years—there is a question whether we would throw them out under this. 181

MR. BALDWIN: We are speaking of the right under this agreement.

THE WITNESS: Legal right, no.

Q. The sailings of the Barber Line are made up of what ships, what ships sail from here to the far East under the name of the Barber Line? A. You mean at what time?

MR. KIRLIN: Do you mean whose ships?

MR. MONTGOMERY: I mean whose ships. 182

A. Since when?

Q. During the time of this agreement Exhibit 1 has been in effect? A. The steamers of the New York & Oriental Company.

Q. When was the New York & Oriental Steamship Company organized? A. Before this agreement.

Q. And these ships have been owned by them all during this time? A. Since then I think, but during that time. You ask the names of the ships on this line?

PAGE CUT OFF

183 Q. Yes. They have been in this traffic all this time? A. Yes, sir.

MR. KIRLIN: On and after 1905 he is asking you.

THE WITNESS: I have given you the name of one. There is the New York & Oriental Steamship Company, the Lancashire Shipping Company, Ltd., Rankin, Gilmour & Company and James Warrack & Company of Leith.

Q. Those are all of the owners whose ships have sailed under the name of the Barber Line? A. Except I think we
184 have had one or two time chartered ships we have put in occasionally, which Barber & Company have put in to fill up.

Q. Those you will give a list of later you say? A. Yes, sir.

Q. Upon what terms does the Lancashire Shipping Company, Ltd., sail under the name of the Barber Line, upon what arrangements with Barber & Company, Inc.? A. They pay us five per cent. commission, loading commission on the freights outwards, and they take all the risks of the profit and loss themselves under the agreement and under the pooling
185 arrangement.

Q. Does Barber & Company, Inc., own any stock in the Lancashire Shipping Company, Ltd.? A. No, sir.

Q. Do any of your officers own any stock in it? A. No, sir.

Q. Nor any of your stockholders? A. None that I know of.

Q. Is that true also of Rankin, Gilmour & Company? A. Yes, sir.

Q. And Dodwell & Company, Ltd.? A. Yes, sir.

Q. And Warrack & Company? A. There are no ships of Dodwell & Company.

186 Q. And Warrack & Company? A. No.

Q. Under that arrangement with the Lancashire Shipping Company, that is a continuing arrangement, is it? A. It is.

Q. Has it been reduced to writing? A. It has not.

Q. When was it made? A. Oh, I suppose ten or fifteen years ago.

Q. How long is it to continue? A. Indefinitely.

Q. Indefinitely? A. Yes.

Q. As to Rankin, Gilmour & Company, is your arrangement with them precisely the same as with the Lancashire Shipping Company, Ltd.? A. It is.

Q. And your arrangement with Warrack & Company— 187
A. It was; we have no arrangement with Warrack & Company now.

Q. When was it terminated? A. The last ship of theirs we loaded terminated it; we have had no arrangements with any other ships, and that ended it.

Q. How long was that in effect? A. I could not tell you at present. I will look into the data, and if you wish it I will give you the last ship that loaded. I think we had some trips during that time.

MR. BALDWIN: The question was, Mr. Barber, how 188
long it had continued.

THE WITNESS: We had loaded for Warrack & Company on and off probably five or six years previous to this agreement coming in.

MR. KIRLIN: That is before 1905?

THE WITNESS: Yes, sir.

Q. Before this agreement came in? A. Before this agreement came in, yes, sir.

MR. BALDWIN: Prior to 1905, for four or five years preceding that? 139

THE WITNESS: Yes, sir.

MR. BALDWIN: And you continued under the agreement down until some recent date?

THE WITNESS: It is three or four years since we loaded any of their ships.

Q. And there is no other owner of a steamship whose vessels you have loaded during the time that this agreement has been in force other than the owners you have named, that is, the Lancashire Shipping Company, Ltd., Rankin, Gilmour & Company, Ltd., and Warrack & Company, except those ships which you have loaded on time charters? A. I think that is correct, but I have not the data with me. We may have had other ships. I can send to the office and get my data and tell you exactly. 140

MR. BALDWIN: Is that approximately correct?

THE WITNESS: That is approximately correct, yes, sir.

Q. Have all of the ships of Rankin, Gilmour & Company and the Lancashire Shipping Company, Ltd., been used in

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141 this traffic during the time this agreement has been in force? A. All of their ships?

Q. Yes. A. No, they have a lot of other ships.

Q. They have a lot of ships operating in other areas? A. Oh, yes, sir.

Q. But all of their ships operating in this trade have been operating by themselves under this agreement? A. I think not; they may have had other ships come and load on their own account, and load oil, coal and other things.

Q. On their own account? A. On their own account, yes.

Q. That would be on a charter? A. That has nothing to
142 do with me; they run where they please.

MR. KIRLIN: That is outside of the Barber Line?
THE WITNESS: That is outside of the Barber Line.

Q. In this traffic I am speaking of? A. Yes, sir.

Q. That would be on charter, wouldn't it, Mr. Barber? A. I do not know; I really do not know what it is, I think it is, but I have not anything to do with it.

Q. You have nothing to do with it at all? A. No, sir.

Q. Do you remember the ships that were operated out-
148 side of the ships operated by yourselves? A. I do not remember that.

MR. KIRLIN: Outside of the Barber Line?
THE WITNESS: No, sir.

Q. Those, however, were not regular voyages, Mr. Barber; none of them ever ran ships as a part of any line from here to the far East? A. A ship might load case oil out for the far East and then load back on the Dodwell Line to New York. On the other hand, we load a ship to the Far East on our line and then a charter to the Pacific, charter
144 across the Pacific.

Q. What I mean is this, Mr. Barber, these steamers, such of them as were not sailed under the Barber name, were not sailed as a part of any regular line at all, they were sailed as a part of some specific agreement for that voyage, weren't they? A. I presume so, yes.

Q. Mr. Barber, you have attended these conferences here in New York held pursuant to the various agreements stated in this petition? A. I have.

Q. Throughout the period of the existence of the agreements? A. Yes, sir, I have.

Q. And you have sometimes been in London and attended the conferences there? A. I have been there, yes.

Q. You are familiar with the entire situation? A. I am.

Q. Mr. Barber, the Isthmian Steamship Company, Ltd., is named as a defendant in this suit. Is the Isthmian Steamship Company, Ltd., connected with this conference in any way? A. No, sir.

Q. Do any of the parties to this agreement have any interest in the Isthmian Steamship Company, Ltd.? A. Not that I know of.

Q. Mr. Barber, have any of the boats owned by the Isthmian Steamship Company, Ltd., or operated by the Isthmian Steamship Company, Ltd., been loaded by any of the New York agents of the lines in this conference so far as you know? A. I do not know what ships they own, or operate, for that matter.

Q. You do not? A. No.

Q. Do you know whether you have loaded any Isthmian steamers, any Isthmian Steamship Company, Ltd., steamers? A. Not under that name, I do not recognize them, no. There have been some ships chartered for full cargoes of steel that the Isthmian Line has handled.

Q. Chartered from whom? A. They have been chartered from various owners.

Q. They have been chartered from various owners? A. Yes, sir; some of our owners have had ships chartered that way.

Q. For full cargoes of steel? A. Yes, sir.

Q. And chartered to the United States Steel Products Company? A. I think they were.

Q. Did the conference have any interest in those steamers? A. Sometimes they were ships owned by the conference members.

Q. And when they were chartered to the Steel Company, how were they loaded, were they loaded by the Steel Company itself, or were they loaded by the agents of the conference? A. Some were and some were not; I do not quite know how to answer that. The Isthmian Steamship Company, Ltd., will tell you themselves what they have done, I do not know anything about the matter.

Q. Mr. Barber, you know what the relation of the conference to these sailings has been, don't you? A. Which sailings?

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149 Q. The sailings of ships chartered to the United States Steel Products Company. Has the conference had any interest in those sailings at all? A. In some of them it has.

Q. Has it been consulted about it? A. In some of them it has, yes.

Q. For what purpose did the conference have to be consulted about a ship chartered by the United States Steel Products Company to carry a full cargo? A. Well, some of these ships were chartered, as I say—we, ourselves, have chartered ships.

Q. Whom do you mean by "we"? A. Barber & Company
150 have chartered ships of Mr. Chambers or the Lancashire Shipping Company, Ltd., or Mr. Warrack, to the Steel Products Company, for a full cargo of steel.

Q. You mean as brokers? A. I mean as brokers. Sometimes we have loaded them and sometimes the Isthmian people have taken the thing in hand and loaded them.

Q. Whom do you mean by the Isthmian? A. Mr. Ryan.

Q. Do you mean the defendant in this suit, John W. Ryan? A. Yes, sir.

Q. He has loaded them? A. Yes.

151 Q. Has Ryan ever attended these conferences, Mr. Barber? A. No, not since he has been with the Isthmian Steamship Line.

Q. Whom was he with before he was with the Isthmian Steamship Company Line? A. He was with Barber & Company.

Q. When he was with Barber & Company he did attend the conference? A. He was in our far Eastern department and he used to attend meetings.

Q. Up to what time? A. Three or four years ago, I think it was, something about that.

152 Q. Mr. Barber, to go back to the question of steamers outside of the conference, I ask you how many outside steamers, that is to say, steamers not belonging to the conference, loaded cargoes on the berth to the far East from New York? A. Very few.

Q. Do you know of any? A. Not at the present; very few have loaded.

Q. How long since there has been one? A. Oh, perhaps eight or nine years ago. The Manchurian Line was outside of the conference until five or six years ago I think; there were quite a number of steamers within the last four or five

years; they loaded quite a number of steamers outside five or six years ago. 153

Q. Let me ask you this question, Mr. Barber, outside of the steamers loaded by the conference lines and outside of the steamers loaded by the United States Steel Products Export Company and the steamers loaded carrying cargoes for the Standard Oil Company, how many steamers have loaded a general cargo from New York to the far East?

MR. KIRLIN: You mean on the berth?

MR. BALDWIN: Yes.

A. I do not think any steamers have loaded. 154

Q. Mr. Barber, to go back to the Isthmian situation, you are familiar with the list of sailings and so on that were prepared and made a part of the minutes of the New York conference? A. I am, in a general way.

Q. I call your attention to the minutes of the New York Conference for October 24, 1911, and ask you if that is a copy of the minutes of that date (handing paper to witness)? A. That is so I think, yes, those are one of the minutes.

Q. Mr. Barber, are there any other parties than those named in the bill who were or are parties to the agreements now in force or that have been in force? A. Not that I know of, I think not. I am speaking of the eastbound business now, Mr. Montgomery. On the westbound there are other people. 155

Q. There are other people? A. Yes, sir.

Q. You understood my question to apply to all the lines, did you not, Mr. Barber? A. That is all we are talking of; we are talking of Barber & Company and the United States and China-Japan, and so and so, and the Asiatic and the Manchurian.

Q. There are no others in that traffic? A. No, sir. 156

Q. You say in the westbound there are some who are not named in the petition at all? A. Yes, sir.

Q. What line or lines are those parties connected with? A. They are connected with the Dodwell Line.

Q. Then with the exception of the Dodwell Line there are no other parties connected with any other line in the westward business? A. Oh, I do not think so.

Q. Named in the petition, so far as you know? A. Yes, sir.

Q. But in the Dodwell Line there are other interests? A. I think so, yes.

E CUT OFF

157 Q. Mr. Barber, I think if you will just explain how the Dodwell Line is composed, that would be as good a way as any to clear that up. A. The Dodwell Line is westbound business from Japan and China and the Straits Settlement and Philippines to New York and Boston, the steamers loaded on that line; I might say they own the Dodwell Line in the same relative way we own the Barber Line eastward.

Q. Do you know, Mr. Barber, whether they control any companies as Barber & Company do? A. No, they do not; that is different.

158 Q. With that exception they are in the same position that you are? A. Yes, sir. The steamships that load westbound in the Dodwell Line are owned by the New York and Oriental Steamship Company, by the Lancashire Shipping Company, Ltd., by Rankin, Gilmour & Company, Ltd., by Gellatly, Hankey & Company, Ltd., and by John Warrack & Company of Leith, Scotland.

MR. KIRLIN: A co-partnership?

THE WITNESS: That is a co-partnership, yes, sir.

Q. Do you know what Dodwell's arrangement is with these lines? A. They load the steamers on commission.

159 Q. The same commission that you have here, five per cent.? A. Yes.

Q. And they have the exclusive right to the westward sailings under the westward agreement the same as you have the exclusive right under the eastward agreement? A. That is so.

Q. What is Gellatly, Hankey & Company, Ltd., is that a British corporation? A. Yes, sir.

Q. With its head office where? A. In London.

Q. In London? A. Yes, sir.

160 Q. John Warrack is a partnership? A. Yes, sir, John Warrack is a partnership of Leith, Scotland.

Q. Who are the co-partners? A. I could not tell you that now.

Q. None of them live in this country? A. No.

Q. Do you know whether Dodwell & Company share in the pooling agreement? A. They do not.

Q. Do you share in the pooling agreement further than through the share of the New York & Oriental Company? A. We do not.

MR. KIRLIN: May it be understood without separate statements of objection that we object to all testimony in relation to pooling westward, as incompetent, immaterial and irrelevant and not within the scope of the suit? 161

MR. BALDWIN: You mean by that you do not want to put a special objection to that line of testimony each time it is offered?

MR. KIRLIN: Yes.

MR. BALDWIN: That is agreeable to us.

MR. MONTGOMERY: I ask to have this minute of October 24, 1911, of the New York Conference marked for identification. 162

Marked Petitioner's Exhibit 6 for identification.

Q. Mr. Barber, those you say are copies of the minutes you think of that meeting? A. Yes, they appear to be.

MR. MONTGOMERY: I will read this minute, Petitioner's Exhibit 6 for identification. It is entitled

"RECORD

New York, October 24th, 1911. 163

SAILINGS AND STEAMERS ON THE BERTH

CHINA RUN.

No. 12. 'Aragonia' (U. S. & C. J. No. x7 & No. 20) Sailed October 22nd full and down to her marks. She carried 3,000 tons steel. Ports of call Hong Kong, Shanghai, Chemulpo, Moji, Kobe and Yokohama."

The next two paragraphs appear to relate to the loading of two others, the Kioto No. 5, and the Jeseric No. 13. The next paragraph reads as follows: 164

"No. 4. 'Koronga' (Isthmian Line No. 6—A. & M.) Arrived Boston, October 22nd. No engagements to report. Ports of call Hong Kong, Shanghai, Dalny, Kobe, and Yokohama. Sailing date November 25th."

Q. Mr. Barber, I ask you why the New York Conference was receiving a report of a ship called the Koronga apparently belonging to some line called the Isthmian Line and reported under the name of the Isthmian Line No. 6—A & M. Will you explain that? A. Yes, I will; it is quite a long story, I

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165 will tell you about that. You ask me what the Isthmian had to do with this. They had nothing to do with it. The Isthmian Line steamer you see here, No. 6, is the 6th steamer that the London conference chartered at a stated rate to the United States Steel Products Company to be loaded on the berth from New York to the far East for the benefit of the United States Steel Export Company, and we called them in our minutes Isthmian Line just to distinguish them from the others, but those steamers were loaded, two of them, by the Manchurian Line, and the others by the others in the conference.

166 Q. In the year 1911 you mean? A. Yes, sir; that was a special agreement for that year only.

Q. Do I understand, Mr. Barber, that the conference, as such, by that I mean the conference lines, are engaged jointly in the business of chartering steamships? A. No, they are not.

Q. I understood you to say that the conference had chartered these steamships to the United States Steel Products Company? A. That is so.

Q. Just what did you mean by that? A. The United
167 States Steel Products Company wanted to have a share of the steamers loaded on the berth, and instead of going outside and taking outside steamers for that work the conference in London arranged to give them, furnish them with six steamers.

Q. The conference in London arranged to do that? A. Yes.

Q. Why was it necessary for the conference in London, they were not in the business of chartering steamers you say; what did the conference in London have to do with it? A. The conference in London engaged their steel contracts
168 with an agent of the United States Steel Products Company in London.

Q. Who was that? A. Mr. Hughes.

Q. Allen Hughes? A. Allen Hughes, yes, sir.

Q. That, however, is for cargo carried by the regular sailings of the line, isn't it? A. Yes.

Q. That still falls short of explaining why the conference, as such, should be chartering steamships to the United States Steel Products Company? A. They did not do it willingly I think.

Q. What do you mean by willingly? A. It is a sort of "If you do not give us those steamers we will go outside and get them." 169

MR. BALDWIN: You mean that is what the Steel Products corporation said?

THE WITNESS: I was not there to hear what was said, but I imagine that was what was said, or something like that.

Q. Let me ask you this question, Mr. Barber, was the situation like this: that the United States Steel Products Company required in addition to the carrying of steel that it carried by the conference lines, the regular ships of the conference lines, required other vessels to go to the far East with steel, full cargoes, is that it? A. They did, but this had nothing to do with that; there were other steamers chartered for full cargo besides this, but these six steamers were steamers that were berthed with the conference agents in New York. 170

Q. That is to say, they carried general cargo? A. They carried general cargo, yes.

Q. A large amount of steel, I presume? A. A large amount of steel, yes. 171

Q. And primarily for the steel Company's own needs? A. Yes, for their own needs.

Q. They all carried some steel? A. Oh, yes.

Q. Considerable? A. Considerable, yes.

Q. Do I understand they all carried general cargo, and the profits of that general cargo went to the United States Steel Products Company? A. It did.

Q. And the United States Steel Products Company chartered these vessels by a charter party entered into between what parties? A. I do not know whether it was a charter party actually in existence, I am not sure about that, but there was an arrangement. 172

Q. A single trip one way from here to the far East? A. A single trip one way from here to the far East, yes, sir.

Q. Why was that arrangement made in London, Mr. Barber, instead of here? A. Because the Steel Company wanted it, they would not make it here.

Q. They would not? A. No.

Q. Why not? A. I could not tell you.

Q. How do you know they would not? A. We tried to

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173 Q. Did you negotiate with them personally? A. Not personally at that time I don't think, but some of the members in the conference saw them and had a talk with them and could not get along with them.

Q. Do you know who that was? A. I do not know who the mouthpiece was at that time; whoever was the mouthpiece would see them about it.

MR. BALDWIN: Did they suggest any reason to you, Mr. Barber, or any person you sent to them, why they would rather make their arrangements here than
174 in London?

THE WITNESS: They did not.

Q. Mr. Barber, this conference does not own any steamers, as such? A. The conference owns no steamers.

Q. The conference owns no steamers? A. No, sir.

Q. That is, the members of it? A. Yes, sir.

Q. But the conference, as such, does not come in at all? A. No.

Q. Do I understand that the conference, as such, made some arrangement with an individual owner among the con-
175 ference, or with different owners, by which they chartered certain steamers and then re-chartered them to the Steel Company? A. No, they arranged that their own owners would give the steamers to the Steel Company and the conference lines would pay the owners of those steamers the loss that was sustained by loading them on those lines instead of loading on the berth themselves, as usual.

MR. KIRLIN: I do not know what you mean by "on those lines."

THE WITNESS: On those lines, instead of saying
176 on those lines loading under charter to the steamship; that makes it clearer, doesn't it?

Q. Mr. Barber, when was that agreement made? A. That was made about November, 1910.

Q. Have you a copy of it? A. I have not a copy of it.

Q. Are there any copies of it in New York? A. I do not think there are.

Q. Can you get one from the other side? A. I probably can do so, but a good deal of this that is done in London is not put in black and white; it is a set of understandings and letters passing and all the rest of it.

Q. Mr. Barber, when that agreement was made, wasn't it, as a matter of fact, understood that the reason that the Steel Company did not want to make that contract here was that they believed it to be in violation of the Sherman Anti-Trust Law? 177

MR. GRIFFIN: I object on the ground that the witness testified that he took no part in the negotiations, that they took place in London, and that the question calls for matters beyond the personal knowledge of the witness.

A. I do not know. 178

Q. You do not know that? A. No, sir.

Q. You do not know with whom, representing the Steel Company, the negotiations were had here? A. The negotiations were in London.

Q. I understood you to say you attempted to negotiate the matter here and that the Steel Company refused to negotiate here, but preferred to negotiate in London? A. Yes, sir.

Q. Who, here, referred you to London, if you know? A. I cannot tell you that.

Q. Is the conference now operating under an arrangement with the United States Steel Company? A. Not that arrangement, that arrangement ended in 1911. 179

Q. When did that terminate? A. In 1911.

Q. When did it terminate? A. I think the Koronga was the sixth steamer, No. 6, I think, that was the last steamer.

Q. What agreement are you operating under, if any, with the United States Steel Products Company? A. A freight contract.

Q. When was that made? A. It was made about seven months ago. 180

Q. About seven months ago? A. Yes, sir.

Q. Where? A. In London.

Q. Have you a copy of it? A. I have not.

Q. Can you get one? A. I want to find out what the real arrangement is, and I cannot find it out.

Q. They won't send you one? A. They won't send me one.

Q. Haven't you much influence with the administration? A. I have; they tell me all the things that are essential for me to know.

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181 Q. Why do you think that is so? A. I cannot tell you.

Q. Did they give any reason for it? A. They say if they do not do it somebody else will.

Q. Whom have you asked for these? A. I have asked my correspondent there, the Lancashire Shipping Company.

Q. Have you got their reply? A. That is their reply, yes.

Q. Can you bring those replies in here, copies of those letters, asking for papers and their replies to you at the next hearing? A. With regard to what?

Q. These agreements—all of these agreements you have asked for? A. This takes place when I am on the other
182 side, I am over on the other side every year and that was by talking.

Q. I understood you to say you had letters? A. I had a letter this morning, a personal letter, with reference to this agreement and how long it runs, and they tell me it runs twelve months from the time it was made. We know the rates of freight and the terms, and all that, but we have not a copy of the agreement.

Q. Do you know whether the United States Steel Company is now chartering vessels that carry general cargo? A. They are not.

188 Q. On the berth? A. They are not.

Q. Did that cease at the time this agreement ceased? A. That ceased in 1911.

Q. 1911? A. Yes, sir.

MR. BALDWIN: I think that this is all the examination we want of Mr. Barber at this time. As we stated at the beginning, it was largely for the purpose of establishing the real parties to the conference or to these agreements, and I think we better adjourn without date, because we will now have to
184 draw up our proposed amendments to the bill, and submit them to counsel for their approval in amending the bill and put it in proper form. Any cross-examination, however, you want of Mr. Barber on these points we have brought out, I suppose now is the time. We are going to examine Mr. Barber at length on matters that we may not be able to arrive at some stipulation with regard to the facts later on.

MR. KIRLIN: I do not think there is any cross-examination about the matter of the parties. We better

reserve a general cross-examination until the completion of the direct-examination. 185

MR. BALDMIN: That is satisfactory to us.

MR. MONTGOMERY: There is one other question I want to ask.

By Mr. Montgomery:

Q. Mr. Barber, what is the present relation of the Anglo-American Oil Company to this traffic? A. They are out of it.

Q. Is there anybody in their place? A. No.

Q. When did they withdraw? A. Oh, you have got the minutes there that shows you. 186

Q. About May, 1912? A. That is about the time, yes, sir.

Q. And they have been out of it continuously since that time? A. Yes.

Q. They sold all the boats, as you understand it? A. I do not know that.

Q. At any rate, they are not only out of the conference, but they are not carrying cargo, as common carriers, from the far East to New York any more, are they? A. I think when they went out of the conference they brought home one or two of their boats and that finished it. 187

Q. And they are no longer in the conference nor in the traffic? A. They are no longer in the conference nor in the traffic either.

Adjourned subject to notice.

New York, May 15, 1913.

Met pursuant to notice.

Present—GILBERT H. MONTAGUE, Special Examiner. 188

APPEARANCES:

Same as before.

GEORGE BENJAMIN DODWELL, a witness called on behalf of the Petitioner, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Dodwell, where do you reside? A. In London.

Q. You have resided there how long? A. Since 1898.

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189 Q. Continuously? A. I have made very many visits.

Q. But that has been your continual residence? A. Yes, that is so.

Q. Have you resided here in this country? A. Never for more than six months; I have been here very frequently.

Q. You have never had any permanent residence here? A. No, I have never had any permanent residence here.

Q. What connection have you with Dodwell & Company, Limited? A. I am Chairman of the Board.

Q. That is a corporation organized under the Laws of
190 the Kingdom of Great Britain? A. Yes, sir, the Limited Liability Acts.

Q. And having its principal office in London? A. Yes, sir.

Q. And branch offices in Hong Kong and Shanghai, China? A. Yes, sir.

Q. And Yokohama, Japan? A. Yes, sir.

Q. Where else have you offices? A. Osaha, Tokyo, Hankow, Foochow, China, Colombo, Ceylon and San Francisco, Tacoma, Seattle, U. S. A., Victoria, Vancouver, B. C., and New York.

191 Q. At what particular places do you have what you call your main office? A. Our main offices, London is the head office; Hong Kong is the head office in the far East; Tacoma is the head office on the Pacific Coast.

Q. You mean on our coast? A. Yes, sir. New York is by itself.

Q. So that all of the places that you have mentioned in the Orient where you have offices are subordinate to the main office at Hong Kong, is that right? A. Yes, sir.

Q. Just branches? A. Well, hardly so.

Q. What are they, precisely? A. They are independent
192 in their working, but Hong Kong is the senior office in the Far East.

Q. Business affecting the policy of the company, then, in the East is directed to Hong Kong? A. As regards shipping, yes, not as regards produce, merchant business; Shanghai would certainly not take their orders from Hong Kong.

Q. Just state, Mr. Dodwell, in your own way, what the business of your firm consists of? A. Primarily we are merchants, buying and selling goods. We deal in almost anything you can think of, almost any article that is purchased

and exported from China or Japan or Ceylon, from the Pacific Coast, from the continent, England, the United States. That is our first business. We are also agents for various steamship owners; we represent various steamship owners. We attend to the loading and discharging of vessels at these various places, and China and Japan as well as the Pacific Coast. 193

Q. You represent what owners? A. In connection with the New York loadings we represent Messrs. Barber & Company.

Q. When you say in your loadings, you mean loadings for New York? A. The conference for New York, yes. I refer to that because we represent a great many owners who have no interest in the conference, have never had a sailing. Messrs. Barber & Company, Messrs. James Chambers & Company of Liverpool, Rankin, Gilmour & Company of Liverpool. 194

Q. Mr. Dodwell, in order to save time, it is not my purpose to have you give the names of everybody you represent, more particularly confine yourself to the conference. A. Yes, sir, I think so. Messrs. James Warrack of Leith, and Messrs. Gellatly, Hankey & Company of London. Those are the five owners we represent in connection with our conference, the westwards, we call them, that is, from China and Japan to New York. 195

Q. These shipping owners that you represent in this conference, their business then is the business of carriers from the Orient to New York, and has been for the time that you represent them? A. That is a part of their business, only a part of their steamers are employed.

Q. But their business primarily is that of carriers? A. Yes, sir.

Q. Were you in China from 1872 to 1898, Mr. Dodwell? A. I was in China from 1872 to 1898. 196

Q. And still representing at that time any of the firms which you have mentioned? A. Yes, sir, most of them.

Q. What connection, if any, did you have with the firm of Shewan, Tomes & Company? A. They were the successors of Russell & Company, Shewan & Tomes were established in 1891, used to load in connection with ourselves most of the steamers which loaded for New York from China and Japan prior to the formation of any conference arrangement. We two firms probably loaded 90 per cent. of the vessels which

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197 came to New York from China and Japan prior to the conference arrangement of 1904.

Q. What was the method of business at that time; were there such things as were called annual arrangements? A. Yes, sir. Prior to the establishment of any conference my old employers, Adamson, Bell & Company, and the firm of Russell & Company, that my firm and Shewan & Tomes succeeded. Those two firms worked together to obtain steamers to load to New York. They arranged with various owners who were then regularly in the trade that each one should load so many steamers and then we, Russell & Company, and
198 Adamson, Bell & Company, undertook to do our utmost to make an arrangement satisfactory with the owners. We eliminated competition by making this arrangement with all the principal owners. As a matter of fact, these owners loaded, as I say, perhaps 90 per cent. of the total tonnage.

Q. Westwards? A. Westwards, yes, sir.

Q. That continued up until what time? A. That continued until I should think about 1895, it may have been a little later. Perhaps I have the dates in the evidence I gave.

Q. You might refresh your recollection and state if you
199 will, Mr. Dodwell? A. Yes, I see between 1891 and 1904 outsiders, these tramps, frequently made their appearance on the berth for New York, no special agreement was come to among ship owners, and the regular liner and the outsiders fought with each other in carrying cargo at low rates of freight, and then came the conference.

Q. Then between 1891 and 1904 there was no actual conference? A. No.

Q. But you eliminated competition in the method which you have described? A. We eliminated it in the way I have described.

200 Q. The present conference was negotiated in 1904, I understand? A. Yes.

Q. Have you got a true copy of that? A. I have a copy that I have always had, and I think it is right; I believe that is pasted up. This is a copy of the original, the 27th of July, 1904 (handing document to Mr. Baldwin).

Q. This is the original of the agreement? A. That only lasted for less than a year.

Q. Before offering this, Mr. Dodwell, how long did this continue in operation? A. This one?

Q. Yes? A. Until May, 1905.

PAGE

Q. It was then superseded by another? A. By an agreement I have which is dated the 13th of April, 1905, I am not sure about the dates, but these are the dates that I have on them. 201

MR. BALDWIN: I offer in evidence memorandum of agreement regarding the trade between Japan, China, Manila, Straits and Malabar Coast, the United States via. Suez, dated July 27, 1904.

MR. KIRLIN: Objected to as immaterial and irrelevant and outside of the issues, and not referred to in the petition.

Marked Petitioner's Exhibit 7. 202

Q. Mr. Dodwell, have you got the original which superseded this agreement? A. Yes, I have the copy I have been using.

Q. Which supersedes Exhibit No. 7? A. Yes, sir, I have (handing pamphlet to Mr. Baldwin).

Q. This is the agreement known as the westward agreement under which this conference is now working? A. Yes, sir.

Q. And has been since the date of it? A. Yes, sir, has been since the date of it, that is right. 208

Q. It was entered into on the 13th of April, 1905? A. The 13th of April, yes, sir.

Q. This agreement, I suppose, was executed so that each one of the parties to the conference got a copy? A. Yes.

MR. BALDWIN: I offer this in evidence.

MR. KIRLIN: We would like to have it understood that all the testimony with regard to the westward arrangement may be received without repetition of objection as irrelevant, incompetent and immaterial, on the ground that all these agreements were made and carried out abroad, and are not within the purview of the statute on which this proceeding is founded. 204

MR. BALDWIN: There is not any question about the documents offered not being the originals, so your objection does not apply as to competency.

MR. KIRLIN: No, sir, not unless we specially insist upon it.

Marked Petitioner's Exhibit 8.

MR. BALDWIN: Mr. Kirlin, there is evidently some difference between the allegation in the petition setting

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205 out Exhibit 1, that is to say, Exhibit 2, as it appears in the petition.

MR. BURLINGHAM: That is incomplete.

MR. BALDWIN: Are you willing to stipulate now that we should be allowed to make a motion at some time to conform the allegations to the proof? You see Exhibit 2 is not in exact terms.

MR. KIRLIN: I do not exactly want to stipulate it in that general way, because we have all consented you may amend the petition, and in doing so I suggest you amend it in the form that you intend to stand upon it.

206

MR. BALDWIN: That is satisfactory.

Q. Mr. Dodwell, did your firm become a party to the agreement of 1904 at the time that it was executed? A. Yes, I think we were the originators of it; it was our wish to form the conference, we were the chief movers.

Q. Then it was through your activities really that this conference was inaugurated? A. Yes, sir.

Q. And to a certain extent, I presume, the terms of the agreement that were finally entered into were suggested or

207 brought about by you? A. Yes, sir, largely so. There were many meetings before that was drawn up.

Q. How long did the negotiations take from the initiative to the time that the agreement of 1904 was made, about how many months? A. It is impossible to say.

Q. In a general way? A. Oh, six months.

Q. How did you carry on the business of the conference, how did the conference carry on the business after it was finally inaugurated with reference to the trade, was it circularized? A. Yes, sir, a circular was sent out.

208 Q. In a general way, what was it? A. A committee was formed, the head committee in London, and they drew up certain arrangements which are stated in the Agreement, committees should be formed in Singapore and in Hong Kong.

Q. As far as the shippers were concerned, were they notified of the agreement? A. Certainly, yes, sir.

Q. Was there any stated form of advertisement or memorandum sent to them? A. Simply a copy of a circular, a rebate circular, so-called, which had been issued by the European conference was taken and copied almost word for word, not entirely so; they were copied in the same way. The European conference had been in existence since 1885.

Q. And rebates played a part of that? A. Rebates had always played a part in the conference. Shippers were conversant with the working of the conference, as they had been in existence in the China and Japan trade. 209

MR. KIRLIN: To Europe.

THE WITNESS: To Europe since 1885.

Q. After this conference agreement of 1904 was made and the rebate system which had been in operation in the European and Asiatic trade before that was practically adopted? A. Yes, sir.

Q. Do I understand by that the method and terms and all that was practically incorporated from the European system? A. Practically so; they were adopted as the basis. 210

Q. So when you circularized the shippers, it was with the information that the system of rebates which they were familiar with had become a part of this conference business? A. Yes, sir, exactly.

Q. In the United States? A. Exactly.

Q. Have you brought with you, Mr. Dodwell, any of the rebate agreements which you had with shippers? A. Those are the only ones I could lay my hands on (handing documents to Mr. Baldwin). 211

MR. MONTGOMERY: They are all alike, aren't they, Mr. Kirlin?

MR. KIRLIN: Substantially so; a little later in date, though.

THE WITNESS: You may take it for granted that was the same form in 1904.

Q. Mr. Dodwell, you have produced here what purports to be the form of an offer to shippers with respect to rebates, dated the 1st of May, 1907? A. The first one that was issued was dated the 30th of July, 1904. 212

Q. I say you have produced this? A. Yes, sir, I have produced that.

Q. Just state what this is, I mean to say, is it or is it not a form of an offer to shippers providing for the payment of rebates under certain conditions? A. Yes, sir, it is an offer by shipping owners.

Q. I mean these conference lines? A. Yes, sir, these conference lines which have agreed to work together.

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213 Q. Under this agreement? A. Under this agreement that they will, at the end of certain periods—

Q. I only want it for the purpose of identification. Is this form which you have here typical of the offer, and is the sheet attached to it typical of the application made by the shipper? A. Of the application made to the shipper, yes, that is so.

Q. And this generally obtains in the rebate relations with shippers? A. Yes.

Q. Since this conference agreement of 1905? A. Yes, that is right.

214 MR. BALDWIN: I offer in evidence two pages of what purports to be an offer of a proposition by Dodwell & Company, Limited, and a form of an application signed by the shippers attached thereto.

MR. BURLINGHAM: This, I understand, it subject to the same objection.

MR. KIRLIN: I understand you agree it may all be subject to our objection?

MR. BALDWIN: Unless there might be some special objection which might arise.

215 MR. KIRLIN: Very well.

Marked respectively Petitioner's Exhibits 9 and 9-A.

Q. This form, as exemplified by Exhibits 9 and 9-A, Mr. Dodwell, is the proposition and the form of application that was executed by all shippers if they wished to recover rebates from the conference lines? A. If they desired to apply for rebates.

Q. To apply? A. Yes, sir.

Q. Of course that would mean if they had conformed to
216 the terms of the proposition they would be entitled to rebates? A. Yes.

Q. And, although this is not Dodwell & Company, Limited, it was understood, I presume, by the shippers, that this was the offer of the conference, so that any one of the conference lines shipped would be responsible for this, is that right? A. I think shippers would require to know there was some one who would give back, who would give these rebates; some one was the sender. We do not declare in that any steamers at all, we declare we would do that.

Q. Was not this offer of rebate in this form the result of a conference agreement of the lines; it was understood to be a joint act, was it not? A. Yes; others would do similarly; other lines, other steamship owners, would do similar, but it was we who had to make the promise to the shippers. 217

Q. Then the practice was that each line or the owners of each steamer to the conference would make a similar offer? A. Would issue a similar circular, yes, sir.

Q. I notice in the fourth clause of Exhibit 9, that is the proposition of Dodwell & Company, there is a provision here that shipments made by steamers of other lines mentioned therein would not invalidate a claim for the above, in other words, they were all members of the conference, and the shipper, without losing his rebate if he shipped by another line, would have a claim against Dodwell & Company, could make it without losing the rebate? A. Exactly. 218

Q. But the shipments over a line of vessels of any of the outsiders would invalidate their claim? A. It would leave that to be inferred.

Q. Was not that the intention? A. It does not say so.

Q. Was not that the intention? A. Presumably it was, if opposition came about. 219

Q. May I assume from that there was not any opposition? A. There was very little opposition; there was some opposition; we have not insisted, we have paid all.

Q. That is, because the opposition was so small? A. It was so small, it was better to be friendly with shippers.

Q. I show you what you have produced here, a copy of a proposition signed Dodwell & Company, of May 11, 1906, exporters from the Philippine Islands to the United States. Is this a printed form of agreements with reference to rebates, of a proposition made to shippers from the Philippines to the United States after this conference agreement was made? A. Those circulars were sent to the London houses, the houses in London of the merchants in the Philippines. 220

Q. Was it circulated in London? A. It was circulated in London, not circulated in the Philippines, none at all.

Q. Why was that, Mr. Dodwell? A. Because we did not know what the law of the United States was, plainly; we knew what the law of Great Britain was, but we did not know what the law of the United States was.

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221 Q. And it was due to that— A. Why, it was sent to the London houses, we had no communication with the Philippine houses.

Q. Was there any form of application that was sent out with this circular? A. I suppose so, but I have no knowledge; there would be necessarily.

Q. Was it in general terms like the one already in evidence? A. Similar to the one that you already have. You will understand, Mr. Baldwin, these forms during all these years have varied slightly, the material has been there, but some wording may be slightly changed.

222 Q. But they are substantially the same? A. They are substantially the same.

Q. It is the form of proposition to shippers with reference to rebate from the Philippines to the United States that these conference lines have been operating under? A. Yes, sir.

Q. Since the conference was formed? A. Since 1906, two years afterwards.

MR. KIRLIN: Just in that connection, I suppose at different times the privilege to ship on lines would be
223 different owing to members composing the conference?

THE WITNESS: Yes, sir, others coming in.

MR. BALDWIN: I offer this in evidence.

Marked Petitioner's Exhibit 10.

Q. Mr. Dodwell, what change with reference to the personnel of the parties was there? A. In the first conference the American & Oriental Line, Howard Houlder & Partners, were not included, they fought their way in.

Q. At what time? A. In 1904; I think they came in in December, 1904, I am not sure of the exact date.

224 Q. You have testified December 1, 1904, before? A. Yes, sir.

Q. So that must be about the date? A. That you can take it is correct. Then the American-Manchurian Line, Bucknall, were admitted the 1st of January, 1911. The Anglo-American Oil Company withdrew from the conference in May, some time in May, 1912. That is all, no other changes.

Q. After this agreement was entered into, Mr. Dodwell, was anything done for the purpose of establishing rates, and where were the rates established? A. Hong Kong

governed the rates in China, Japan and Hong Kong, all 225
of the south of China and the Philippines. Singapore governed all of the Straits; that is, the whole of Malaya, and like Sumatra and Java and all of the Islands there.

Q. How were the rates determined, how were they fixed? A. The rates were determined according to the value of the cargo, according to the space occupied in the vessel.

Q. I meant more particularly was it always arranged in conference? A. Arranged by these committees.

Q. Committees appointed by the conference? A. Committees appointed, I think, Mr. Baldwin, you will find the names mentioned in the agreement that you have, the names 226
of the agents I think were given there. You have those agreements, I cannot find them.

Q. You mean on this title page? A. No, that was only to whom we sent them, those are my own notes, but you will find the agents declared to be so and so and so and so. I do not remember the names of them. They may have varied in these years.

Q. Just to go back a moment, Mr. Dodwell, before I go into the particulars of this agreement as to the history of the trade there before the first conference was formed, what 227
was the condition of the trade would you say as to the rates or the fluctuations and the lack of uniformity? A. During the years before the formation, say, the last ten years before the formation of the conference, a great many more outside steamers had come out to China and Japan, and they were all prepared to compete, take anything they could get to get back; they would sometimes load on the berth, sometimes they would charter. People that never touched an outsider, a shipper would not touch an outsider unless he could get it cheap, generally cheaper as compared with the regular.

Q. You say as compared with the regular? A. That is, 228
the regular steamers.

Q. You mean this form of unity which you had brought about— A. Between Russell and ourselves, we continued, and continued after Russell & Company went out of business, continued between their successors, Shewan, Tomes & Company, Dodwell, Carlill & Company it was then. These outsiders came in, and they worried us a great deal, they worried us, Shewan and ourselves, who were loading, as I say, 90 per cent. of the steamers.

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279 Q. Worried you in what respect? A. By lowering rates unnecessarily, coming in sometimes when the rate was 40 shillings, 40 shillings was not an excessive rate at that time, and they would take it at 20.

Q. And the general effect was to demoralize? A. I say it did demoralize.

Q. When you say it disturbed you very much, you mean it brought about a demoralization of the rates? A. It did, it disturbed us in more ways than one; it disturbed us as shipping agents in the amount of remuneration we received; we were paid by commission, 5 per cent. on 40 shillings was
280 more than 5 per cent. on 20 shillings which we might have to expect if we competed with the opposition, and we might have to do that. It disturbed us as merchants very much indeed. We never knew what rate of freight to reckon on for our produce.

Q. For yourselves? A. No, sir.

Q. Were you large shippers at that time? A. We were and we are.

Q. I suppose that you naturally confined all your shipments to your own lines? A. Naturally so, preferred to
281 do so.

Q. Regardless of the cut in rate by the outsiders, you still adhered to your own lines? A. Generally our own lines would have to accept the rates the other lines made.

Q. In other words, the competition of these outside people brought the rates down to their level, whatever it might be? A. That might be for a short time.

Q. How long did that last? A. Until the formation of the conference.

Q. About two years? A. More than that, it was going on—it was going say for ten years, until the merchants
282 themselves, the shippers themselves, complained of it. They saw what was going on—

Q. Mr. Dodwell— A. May I go a little bit further?

Q. Pardon me, this is a law suit? A. I beg your pardon.

Q. I suppose during this competitive period when this demoralized condition was in existence your lines were continuing their regular service? A. We were, not a regular service, an irregular service naturally.

Q. Had the service been irregular before this period? A. Before the competition?

Q. Yes. A. No, fairly regular before that.

Q. And the irregularity that existed during the competi- 233
tive period, is it the fact that from the incursion in this territory by the outsiders— A. Yes, sir.

Q. Was it because of the acuteness of this condition you have just testified to that this conference agreement was brought about? A. It was.

Q. Were any of those disturbing elements included in the conference, I mean to say, the personality? A. They were, yes.

Q. In other words, you got the majority I suppose of those with whom you had been in competition to go into this conference? A. A great many of the old regular owners 234
retired, tired of the business; others took their places, some of the new men who had been fighting.

MR. KIRLIN: You are speaking of before the conference?

THE WITNESS: They retired from the trade when the conference was formed. They had been gradually retiring prior to that, the regulars.

Q. Such as were alive? A. Such as were alive.

Q. And went into the conference? A. Yes, sir, and went into the conference. 235

Q. And with the result that there was practically no competition thereafter? A. Practically we took in all of the opposition.

Q. And the purpose was what? A. To avoid competition.

Q. To avoid competition? A. Yes, sir, to avoid competition.

Q. With reference to these circulars, copies of which you have identified, how regularly were they sent out to the trade? A. Every year, once a year.

Q. Once a year? A. Yes, sir. 236

Q. Was that kept up? A. Yes, sir.

Q. Down to the present time? A. Up to the present time, excepting in the Philippines.

Q. How did that deviate? A. I could not tell you, Mr. Baldwin, I do not know the reason why, I only know no circular was sent and none has been sent for some years; it was only sent for a year or so.

Q. You mean after 1906? A. 1906, perhaps a year after I do not think it went after that, and I do not know why, it is ancient history.

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287 Q. I suppose the rebates went on just the same? A. The rebates have gone on just the same.

Q. And down to the present time? A. Down to the present time.

Q. On the Philippine trade? A. On the Philippine trade.

Q. After the conference agreement by which competition was eliminated, was there any uniformity of rates? A. Yes.

Q. In excess of what the competitive rates had been before? A. Yes.

Q. Considerably greater? A. In some cases yes, in other cases no.

288 Q. In what cases yes? A. Valuable cargo was increased considerably, common cargo was lowered.

Q. You mean lower than the competitive rates? A. Lower than the competitive rates.

Q. What do you mean by the common cargo? A. Low classed cargo.

Q. Mr. Dodwell, this has all got to go to the Court? A. Low cargo is not liked by ships, it is often difficult to stow, it often means tremendous claims at this end, ships avoid it if they can. When there was competition, nobody wanted

289 the stuff, we did not want it, but wanted the other people to carry it.

Q. You wanted the higher class? A. We wanted the higher class that made the rates low on the higher class in competition.

Q. But not afterwards? A. Not afterwards, no, of course we put them back.

Q. Will you give us an illustration of what you mean by the class of merchandise which would be common cargo? A. Common objectionable cargo, yes; you take gambier.

Q. What is gambier? A. Gambier is a very large export

240 from the Straits.

MR. KIRLIN: What is it, what does it consist of?

THE WITNESS: I do not know, it may be tanning, it is yellow.

Q. Used for tanning purposes, is that the idea? A. I do not know. Jelutong is a very common form of rubber, very common; it is 60 or 65 per cent. of water, and very objectionable in character, a sort of paste, looks like putty. These cases, of course, leaked fearfully, and were very bad for carrying.

Q. How was it put up for transportation? A. In cases

Q. What other class? A. Oil. 241

Q. What kind of oil? A. Wood oil, fish oil, cocoanut oil, every oil in fact.

Q. They are generally put up in casks, aren't they? A. Yes, sir, puncheons or casks, tierces; that is very difficult to carry.

Q. Why is it difficult? A. It is very difficult to stow it without getting damaged on the voyage; leakage, pressure on these casks. We must carry it because we have promised shippers we will provide for every class, so it is carried.

Q. Give us an illustration of what you call high class trade? A. Tea, piece goods, straw braid, certain sorts of 242 straw braid, essential oils, camphor, bristles, vegetable wax, furs, skins, rugs, wool, cocoanut, allspices, nutmegs, pepper, cinnamon, cardamoms.

Q. I suppose that although you are bound to carry the entire cargo that you have described, you made it a point I suppose to discourage that kind of shipment as much as possible? A. Not at all.

Q. But you do make it a point to encourage the shipments over that line of what you call the high class of cargo? A. We carry all kinds.

Q. Isn't it a fact that this low class freight has very 243 requently been shipped by you over other lines by the Pacific oute so as not to send it over the conference lines? A. I do not think so; I do not think the Pacific lines carry much of that common cargo, I do not think they carry any.

Q. Are you engaged at all in the Pacific trade, Mr. Dodwell? A. We are.

Q. In what capacity? A. On the Pacific coats we represent the Blue Funnel Line, we are the agents for the Blue Funnel Line.

Q. Has it any name? A. Alfred Holt & Company. 244

Q. Is it a British corporation? A. It is a British corporation; there are two companies, the Ocean Steamship Company, Limited, and the China Mutual Steamship, Limited.

Q. You load their steamers at what ports and for what ports? A. We load them from Tacoma, Seattle, Victoria, Vancouver, to all China and Japan ports, Manila and all the ports homeward to England via. the Suez Canal.

Q. Was there any conference in which that line is engaged and other lines in the Northern Pacific trade? A. I do not

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245 think so; there is on the Pacific coast, at Seattle, where they try to arrange rates of freight; they do not always succeed.

Q. No conference as to rates? A. There is no conference, no rebate.

Q. There is no rebate at all? A. I am speaking of the Pacific trade from America.

Q. What is the tendency with reference to high class freight moving westward, over what route, the quicker route or the slower route? A. The tendency is the quicker.

Q. What is the tendency of the lower class of freight which you say was undesirable? A. It would go by the
246 slower, naturally; it would be cheaper.

Q. What do you consider or call your fast route? A. The fast route is across the Pacific and by the transcontinental railroads, that is the fast route say to New York, that is the objective point.

Q. Does this high class freight go that way larger than the other? A. Yes, sir; largely so.

Q. It does? A. Yes, sir; largely so.

Q. What proportion does the high class freight bear to the lower class freight that goes the other way? A. I could not give you figures, Mr. Baldwin.

247 Q. I do not expect you could give figures that would be accurate, but can you give some general idea, two to one or three to one? A. I should think a low class cargo is more than a high class cargo.

Q. Much more? A. No, I should not think much more.

Q. Would you think there was a fair equal division? A. Well, roughly, half and half.

Q. The net result both to the carrier and to the agent in remuneration would be greater out of the high class cargo? A. That is so. May I say we do not represent the Blue
248 Funnel Line in the Orient.

Q. You do not represent them at all? A. Not in the Orient.

Q. Do you know whether or not there was any agreement made between the conference lines and the Blue Funnel Line or other lines in connection with this continental transportation carrying of high freight? A. You mean any agreement between the Trans-Pacific lines and the Suez lines?

Q. Yes? A. No, there is no agreement.

Q. Was there in 1904 or 1905? A. Certainly not.

Q. Or in 1906? A. No, never.

Q. You are quite sure? A. No, never in the work between 249
the Suez transportation and the Trans-Pacific lines.

Q. I do not mean it was ever reduced to writing; was there ever any general understanding? A. No, not even any general understanding.

Q. Between the agents? A. Well, we meet each other every day out in China, we may talk, and probably do, and compare things.

Q. Was there any agreement eastward? A. Eastward?

Q. Yes? A. Do you mean from New York?

Q. Yes, by way of the Trans-Pacific? A. I have no knowledge of anything of the sort. 250

Q. Have you got a copy of the freight tariffs that were adopted at the conference agreement? A. When I was examined by the Royal Commission in London I handed in certain tariffs there, and I have copies of those that I handed in.

Q. Will you permit me to see them, Mr. Dodwell? A. Yes, sir (handing papers). From Hong Kong, from Kobe and Yokohama, from Shanghai, dated Hong Kong, the 1st of December, 1907; from the Philippine Islands dated Hong Kong the 1st of November; those were handed in to the Royal Commission (handing papers to Mr. Baldwin). Those 251
red figures, Mr. Baldwin, have since been added, I do not know what they are.

MR. KIRLIN: Those are the tariffs of 1907, are they?

THE WITNESS: Yes, sir, of 1907.

MR. BALDWIN: I offer in evidence the freight tariff of Japan and China to New York by way of the Suez Canal, adopted December 1, 1907.

Marked Petitioner's Exhibit 11.

MR. BALDWIN: I also offer the tariff freight rate 252
from Kobe and Yokohama and also for the Suez Canal to New York.

Marked Petitioner's Exhibit 12.

MR. BALDWIN: I also offer in evidence the rates of freight from Shanghai.

Marked Petitioner's Exhibit 13.

MR. BALDWIN: I also offer the freight rate from the Philippine Islands.

Marked Petitioner's Exhibit 14.

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253 Q. They are all about the same date, are they not? A. Yes, sir; I presume the same date.

Q. Mr. Dodwell, these exhibits have red ink memoranda. I understand that they represent later amendments to the rate? A. I presume so, but I do not know.

Q. That which is in typewriting, in black type, is the rate which was in effect December 1, 1907, for each one of these? A. Yes, sir.

Q. Where were these rate circulars issued from? A. From Hong Kong.

Q. All from Hong Kong? A. All from Hong Kong.

254 Q. For each one of these ports? A. Yes, sir.

Q. The rate of freight that is referred to here, where it means shillings and pence per forty cubic feet as it appears here, or according to its weight? A. 40 cu[illegible] feet or gross ton, dead weight.

Q. For instance, bamboos, 25 shillings [illegible]bic feet? A. What we call a measurement ton.

Q. Here is another of hemp seed [illegible] per ton? A. Of 2240 pounds.

Q. I take it to be 20 cwt. A. [illegible] is hundred-weight. That is the English hundred-weight.

255 Q. Wool I find 30 shillings per weight or mt. What is that? A. Or measurement. Whatever is advantageous to the carrier.

Q. That is, whichever yields the most? A. Whichever yields the most; we compress wool so it will weigh as much as it measures.

Q. Do you know whether or not these rates from each of these ports are the rates they are now operating under or have been operating under? A. I think they have been altered since, I cannot tell you when.

256 Q. Are you at all familiar with the handwriting of the red ink entries that have been made on these exhibits? A. Yes, sir; that was the handwriting of one of the clerks in our London office.

Q. For instance, I notice, take as an illustration, hemp seed, 35 shillings per ton, 20 cwt. The 35 is scratched out—this is an illustration—and there are the figures 50, that means the figure has been increased from 35 to 50? A. I should think so, yes, sir.

Q. Where these figures have been added in red ink, it means a modification either up or down, according as they

appear here? A. Yes, sir. I think you will find additions also there. 257

Q. Yes, there are some additions? A. It means other classes of cargo have come along.

Q. For instance, lard? A. That is something new, you would expect to import it, not export it.

Q. In the rates from Hong Kong I find the red ink interlineation of lard 35? A. Yes, sir.

Q. That is an addition? A. Yes, sir.

Q. And on the rate from Kobe and Yokohama, for instance, there is zinc ore? A. Yes, sir.

Q. Is this bean cake? A. Yes, sir. 258

Q. Beans in bags, Chinese beans, those are all additions? A. Yes, sir.

Q. And the change in the rate or the addition to the schedule were also fixed in this conference, is that right? A. I am not sure that that is the last.

Q. Where they do agree they have been the result of a conference agreement? A. Yes, sir.

Q. Do you know in what form these were distributed to the shippers? A. Shippers ask us for rates of freight in Hong Kong, say, and they are presented with a copy of the tariff. 259

Q. In this form, in typewritten form? A. No, sir; in a printed form.

Q. In a printed form? A. Yes, sir.

Q. And all contain the provision that all above rates are subject to a deferred rebate of 10 per cent. as per rebate circular, with the exception of those marked "N," which are net, is that right? A. Yes.

Q. In fixing the rate under this conference agreement, that is not referred back to London for consummation but fixed directly by the conference agents there in Hong Kong? A. It is fixed directly by the people in Hong Kong and at Singapore. 260

Q. They are not even submitted in advance, are they? A. But London would have the right to revise it if they wish.

Q. But as a matter of fact— A. They do not do it.

Q. Mr. Dodwell, have you brought with you an agreement between ship owners and certain merchants? You remember you testified before the Commission there were two memorandums of agreements between merchants engaged in trade with the port of New York. The one I want is a mem-

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orandum between the New York Conference and certain merchants engaged in trade with New York; have you got that? A. I have got no agreements except what I have handed in.

Q. 19010 is the question on page 240? A. Yes, sir; that is the Singapore one that I refer to. The first one is this agreement which you have had, I have handed that to you.

Q. Yes, sir. A. And the second one was not to be published, that was what the Royal Commission did not publish. They published all these rates I have given you.

Q. Have you the other one with you? A. No, sir, I have not the other one, the Singapore one is finished, cancelled.

Q. Terminated? A. Terminated; I did not bring it with me, I did not think it was necessary.

Q. Could you make arrangements to produce it through counsel later? A. Most certainly.

Q. Have you any memorandum which would show what the terms were, or do you prefer to recollect what the terms were? A. Roughly speaking, the agreement was between the westwards conference and certain members, certain shippers, from Singapore.

Q. From Singapore to New York? A. From Singapore to New York, yes. I do not remember the names. Boustead & Company were the spokesmen.

Q. Who are they, and where are they? A. They are very large shippers in Singapore and other ports in the Straits Settlement, but they were the spokesmen and the people through whom all the dealings took place. Through their representatives in London an agreement was reached that they were to receive an extra commission of 5 per cent. on the freights out of Singapore in consideration of their giving up all their chartering and helping the conference.

Q. They were very large shippers engaged in the business of chartering vessels? A. They represented a group of large shippers.

Q. And they were not confining themselves or patronizing the conference lines? A. On the contrary, they were actively opposing it.

Q. They were? A. Yes, sir, they were actively opposing it.

Q. In order to get their business practically exclusively for the conference lines, you conceded to them this extra commission? A. We bought them.

Q. You just bought them out? A. We bought them.

Q. You do not mean you bought out their plants or assets? A. We followed the lines of the European conference.

Q. And bought their business practically? A. Bought their business. 265

Q. And in this manner? A. In this manner.

Q. And the result of it was they ceased? A. They fell into line and assisted.

Q. They ceased to charter vessels? A. Yes, sir.

Q. Based on this consideration? A. Yes, sir.

MR. BALDWIN: I offer in evidence the rates from Singapore and Penang, dated the 15th of September, 1905.

Marked Petitioner's Exhibit 15.

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Q. Do you know who those firms are now? A. No, sir. Boustead & Company, Paterson, Simons & Company, Huttenbach Brothers, I think Adamson & Gilfillan; there were others, but I do not remember them.

Q. Were they the only exceptions that were made on the shippers there, this offer of additional consideration? A. There was only one other firm of any size whatever.

Q. And that firm— A. Did not come in.

Q. Did not come in? A. And never has come in.

Q. They could not be bought, is that the idea? A. They were above it. 267

Q. Was the Standard Oil one of them? A. No, sir.

Q. Under any other name than the Standard Oil? A. No, sir.

Q. Mr. Dodwell, do you remember whether or not this agreement with these shippers had a provision that this extra commission or compensation was, just precisely how it was ascertained? A. How the compensation was ascertained?

Q. Yes? How did you arrive at the amount they were to finally get, do you remember? A. There was a condition that the freight should be of an average earning of so much, what the minimum was I do not know, but the minimum was low, 268 and then they should receive five per cent.

Q. Was this additional compensation or commission upon freight from any other place than the Straits? A. On everything from Singapore and Penang, the ports of entry of the steamers.

Q. Was there any provision that the United States Conference steamship office should pay a certain per cent. over a certain amount into a common fund in London for their benefit? A. They were to pay five per cent.

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269 Q. What I am trying to get at is where arranged and how? A. It was to be paid to Boustead in London, the New York conference not knowing who received the money or how it was distributed. We did not know, we do not know to this day who benefited by that money.

Q. It was not intended that the New York conference should know, is that it? A. I do not think so. This man Huttenbach was not in the original; he fought his way in and insisted and got a share of that five per cent.

Q. And that lasted you say how long? A. Singapore began in 1905. It was cancelled I think in 1911, I cannot be
270 certain of the exact date, it was withdrawn and cancelled.

Q. And not obtained in any way since? A. In no way.

Q. Do you know why it was cancelled? A. Because objections were raised by the government to our discriminating.

Q. Which government? A. The Straits government, the British government.

Q. The British government in the Straits? A. Yes, sir.

Q. Discriminating and by picking them out as factors for this discriminating against others? A. Yes, sir.

Q. And that is the reason you abandoned it? A. That is the reason we abandoned it, and we were very glad to do it,
271 to get the opportunity to do it.

Q. Wasn't there some opposition made by the lines to this demand of abandoning upon the ground that it was up to the conference to take care of their friends, was such a contention made? A. I do not quite follow you, Mr. Baldwin.

Q. At the time that the Straits government made a demand upon you to cease discriminating in favor of these favored shippers, did you and your conferees object to abandoning this line of business, favoring those particular shippers upon the ground that it was to your interest, it was really to your
272 interest to protect your friends? A. We felt it was our duty to protect our agreement, but we did make the recipients of that five per cent. drop it, to wait, and they did; we pointed it out, that it was the only thing, the only black mark against us.

Q. That is to say, at that time, so far as the Straits government was concerned, any action of yours which would violate the law there? A. We did not violate the law, there was no violation of the law.

Q. Did not the Straits government contend you were violating the law? A. There was no say of violating the law, there was no contention of the sort.

Q. What happened to these favored shippers? A. They 278
continued to support the conference.

Q. Are all of them still in business? A. All of them are still in business.

Q. Did any of them amalgamate? A. I think not, none of the firms that we understood were getting a share of the five per cent., they have not amalgamated.

Q. Do you remember testifying before the Commission to the effect that of the three firms mentioned, two of them are amalgamated, and one firm is in Singapore and the other went out of business; is that right? A. Yes, sir; that is a different thing altogether, Mr. Baldwin; it is not one of the 274
original ones. That is separate.

Q. What was that? A. One of the steamship lines in the conference prior to the formation of the conference had been in the habit of giving a special return to certain shippers in Singapore, their particular friends. When we arranged with the Singapore merchants to give this five per cent., this one line in the New York conference said we must protect our own friends, so an extra clause was put into the agreement that they might protect these men.

Q. In what way? A. By giving them a return.

Q. Which was not given to others? A. Which was not 275
given to others. That was given for a year or two. One firm amalgamated, another went out of business, I think two went out of business, not in consequence of the returns, and the thing stopped. That was the extra two and a half per cent. was given. That is referred to in the second return here (indicating Royal Commission Report on Shipping Rings.)

Q. Mr. Dodwell, were any of these Singapore preferential agreements in effect as late as 1908? A. Yes.

Q. They were? A. Oh, yes. The five per cent. was in ef- 276
fect.

Q. Was there another agreement in effect in 1908 in addition to the one which you say went out of business when the firms were amalgamated? A. No, none; there never has, only one through all this work, from 1904 to 1913.

Q. Will you turn, Mr. Dodwell, to page 237, and just read in the first column Question 18894 and what follows there, and refreshing your recollection say whether or not there were some other agreements that continued after this agreement you have stated was terminated, by which those special firms got special commissions?

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277 MR. KIRLIN: Are you now referring to the 2½ or the 5?

MR. BALDWIN: The 5.

A. I cannot see any reference in that column to anything of that sort. There was one with the European conference, that we had from Mr. Shelford.

Q. Do you think that is what that refers to? A. I see here the question is asked:

"18889. We have a good deal of evidence, as you have read, from the Singapore trade about this 5 per cent.
278 which the favored merchants have?—Yes, you have had, Mr. Shelford.

"18890. I see that is carried out also in the New York trade?—Yes."

There is nothing there. There is the one agreement.

Q. Only one agreement? A. No more with the Singapore people. The big merchants objected to this clause being put into the agreement.

Q. What did you mean when you testified before that Commission you thought there was no possibility of that being
279 abolished on account of the strength of those merchants? A. Because they refused point blank up to that time, it was only when we said "the government is going to make trouble, you must help us out," we said "we cannot defend it," the only thing we have to complain of at all.

Q. Up to that time it had not terminated but has terminated since? A. Yes, sir. This was in March, 1908, I think.

MR. KIRLIN: You mean that you gave your evidence?

THE WITNESS: That I gave my evidence.

280 Q. With reference to the tariff, you have already testified, Mr. Dodwell, that when you printed these tariffs you distributed them among your shippers, is that right? A. Yes, sir, that is quite right.

Q. What was the practice, if there was any change in the rates? A. The shippers would be advised of any change in rates.

Q. In what way? A. A notice would be sent to them.

Q. A printed notice? A. Presumably a printed notice. Generally speaking, if there were any important changes they would be consulted first.

Q. These rates were always subject to change without notice, I presume? A. They were. 281

Q. But in practice you always gave notice? A. In practice we always gave notice, and when rates were raised it was allowed for a man to declare if he had made forward contracts on the ground if those contracts would obtain, and we honored them to the extent of more than seven months in some cases, for seven months after raising the rates.

Q. With reference to the steamers crossing the Pacific from Hong Kong and from ports in Japan and Yokohama, I understood you to say a while ago there was no agreement as to rates? A. Not between them and the Suez companies, 282 the westward companies.

Q. Was there any agreement between them and any other carriers with reference to the fixing of rates? A. All the trans-Pacific people had a bureau where they fixed their rates, an office, they were separate.

Q. You say that you had very friendly relations with the representatives of the trans-Pacific? A. Yes, sir, quite so.

Q. You used to discuss the rates? A. Yes, sir.

Q. And compare, I suppose? A. Yes, sir, some questions.

Q. For the purpose of seeing if there was any difference in the rates, or arranging any compromise in any way? A. 283 Quite so, so we should not cut one another's throats.

Q. In a friendly way it could be arranged that the rates on the trans-Pacific and the Suez should really support each other so there should not be any difference in the rates? A. No, I do not think it went as far as that.

Q. How far did it go? A. Just as we said, we would take 40 shillings on tea and they would not take any less and they would say "We are going to charge one and one-half cents a pound and will not take any less;" it went by the Pacific, probably 75 or 80 per cent. 284

Q. The result of those friendly exchanges of confidences meant there was not any real discrepancy in the rates? A. Yes, sir, they more or less agreed, but at the same time there was no agreement between them.

Q. Did the Suez route get some advantage because of the fact it was a little longer, I mean any advantage because it was a little longer route? A. Did the Suez get any advantage?

Q. Yes, did they, in this respect, that they would be allowed to have a rate a little bit lower because it was a

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285 longer haul? A. You mean that from the merchant's point of view?

Q. No, sir, say in these friendly conferences between you and the agents or representatives of the trans-Pacific Companies, that it worked out so that the rates which they would charge would be a little bit more than you would charge because your Suez route was longer, is that right; just state how that is. You understand the question, don't you, Mr. Dodwell? A. I am afraid I do not.

Q. Take the rate, for instance, on tea and the trans-Pacific representatives would say "We will charge a cent and a
286 half" and you would say you would charge 40 shillings, that rate gave them a little difference in the actual carrying price because that route was the shorter route? A. I think that after the publication of these Suez rates the trans-Pacific line maintained their rates. They found that the conference held to their rates, whereas before shippers would tell them that they were—it will all work around to your way—because shippers would tell them that the Suez people would take say 30 shillings. Well, the trans-Pacific people found that our rates were maintained, and they need not believe
287 the stories they heard from shippers, and therefore they maintained their rates and we let them know that the trans-Pacific people would maintain their rates. In that way you may say we worked together, we published rates and they published rates. Merchants would say "I want to ship to New York, and I want to take a long time, I do not want my cargo to get to New York for a couple of months, I won't ship it by the trans-Pacific and land it there, there is too much extra storage."

Q. Your rates would be a little bit higher? A. Our rates would be lower.

288 Q. Because it was a slower route? A. Because it is a longer route.

Q. And a slower route? A. Yes, sir.

Q. Mr. Dodwell, was there any special agreement with the shippers of tea by which they got any preference in any way? A. None.

Q. Do you know whether or not there is an agreement known as a Calcutta agreement by which the shippers of tea do get a preferential rate? A. It is a different form of rebate. I do not know exactly the working of the rate of the Calcutta freight arrangement.

Q. Was any part of it carried into the conference? A. No, sir, not by our steamers or by the Pacific. 289

Q. You are quite positive that the tea shippers get no special discounts or advantages over any other shippers that ship from the same ports? A. Not from China and Japan. Calcutta, I do not know what the system is there.

Q. And none of these ports that the conference serves? A. None of these ports that the conference serves.

Q. Did you bring with you any copies of the Hong Kong conference minutes? A. I have none with me.

Q. How often do they hold their meetings? A. Hong Kong held a meeting every Monday, once a week. 290

Q. Attended by all the conferees? A. Yes, sir, all the committee.

Q. Is it their practice to enter the commitments of the various vessels on the minutes? A. I think the minutes that I remember seeing are of the most formal character, detailing the vessels that will be free by a certain time, and what has been decided is the first port they shall commence their loading at, and then the various ports of call which each vessel is to take up, so that there shall be regular service given to all these different places.

Q. And at these weekly meetings, among other things it is arranged in conference what the ports of call will be for those respective vessels? A. That is right. 291

Q. How are the pools made up? A. The pools?

Q. Yes. A. The pool is made up in Liverpool.

Q. And upon information furnished from what source? A. By the owners.

Q. Do the conference minutes that are now in Hong Kong— A. Nothing to do with the pool.

Q. Not even the amount of the tonnage reported, or anything of that kind? A. No, sir, nothing at all to do with the pool; the conference committee there would have nothing whatever to do with the pool. They would furnish a certificate when a vessel was ready to go on their loading under the pool, nothing beyond that. 292

Q. Has it been the practice since this agreement 2, that is Exhibit 7— A. What is the date of it?

Q. 1905—was executed for the agents of the various lines to conform among themselves as to the rates to be named, or reductions? A. Yes, sir.

Q. After rates were determined, they were held out as the minimum rates, were they not? A. That is right.

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293 Q. Were there reductions in rates from time to time? A. I think so, I cannot give you instances.

Q. Those reductions were made only upon the unanimous consent of the Hong Kong representatives, were they? A. Yes, sir.

Q. In pursuance of this agreement? A. Yes.

Q. There is a provision in this agreement, paragraph 3, "except only that in the event of any outside steamer loading and quoting a lower rate at any port than the boats of the parties named, then the Joint Agents at that port may allow the boat preceding and following, or alongside (two
294 only) such competing steamer to accept whatever rate the competing steamer may quote, but it is understood that the Hong Kong body is to be consulted beforehand, if possible?" A. Yes, sir.

Q. Did such events occur? A. No.

Q. So over that part of the agreement there was no necessity for any consultation? A. There was never any consultation under that agreement.

Q. Were the rates from Singapore and Penang fixed by the agents at Singapore? A. Yes.

295 Q. In pursuance of this paragraph 4? A. Yes, sir, by the committee.

Q. In other words, each one of those provisions was lived up to? A. Yes, sir, I think they also held weekly meetings.

Q. In pursuance to provision 5 did all the parties to the agreement make a statement of their existing contracts? It says here "No private rebate, brokerage"— A. Yes, certainly they would declare, they were very few, scarcely any.

Q. Was any private rebate or brokerage or commission or refund of any kind paid after this agreement? A. Not after that time.

296 Q. In pursuance of section 6, "that no more than one firm of Agents for the Westward business of each Line is to be allowed at each port?" A. Singapore, I believe two firms of agents were allowed there.

Q. It says here "No more than one firm of agents for the Westward business of each Line is to be allowed at each port?" A. Yes, sir, that is Singapore.

Q. I say there was never more than one firm? A. No, sir.

Q. Has that provision been lived up to? A. Yes, sir, that provision has been lived up to.

Q. By whom and how were the number of loadings per

annum determined, by whom and how? A. The conference in London. 297

Q. That was left to the conference in Hong Kong? A. The number of loadings?

Q. Yes? A. That was determined by the body in London.

Q. Paragraph 7 of this agreement provides for the number of loadings for each one of these lines. In this Exhibit 7, Mr. Dodwell, I find a written memorandum which purports to increase the number of loadings for all of the lines in 1910 and 1911. Will you look at it and state whether those amendments were adopted and how (handing exhibit to witness)? A. That is my handwriting. 46 is the original we started with. Then in 1910, February, instead of 46 we made 53, and we found we wanted more. 298

Q. Then again? A. Then afterwards we made it 59 because the Manchurian, the American-Manchurian was admitted; it made 59.

Q. And the increased number of sailings in 1910 and 1911 by reason of the admission of the Manchurian Line, that was arranged for where? A. In London.

Q. Since 1911 down to the present time, have these loadings been admitted? A. The Anglo-American Oil Company has gone out, nine sailings. 299

Q. With the exception of that? A. With the exception of that.

Q. When did the Anglo-American Oil Company go out? A. In 1912.

Q. Up to that time it was maintained? A. Up to that time it was maintained.

Q. During the time the Anglo-American Oil Company were a part of the agreement, did they confine their holdings to their own steamers, practically? A. No, they had not enough of their steamers to load. 300

Q. It says here "The Anglo-American Oil Co. to confine its loadings as far as possible to its own steamers?" A. They had not enough of their own steamers to load.

Q. And the result was they loaded on other steamers? A. They loaded on steamers of other parties belonging to the conference, they made up their nine loadings.

Q. In that way? A. Yes, sir.

Q. Were there any other loadings admitted excepting upon the consent of two-thirds of the Signatories as provided here, that is to say, lived up to? A. That has been lived up to.

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301 Q. It further says, "The sailings allotted above to each of the Signatories shall be distributed as nearly as possible at regular intervals throughout the twelve months, and the order of taking the berth shall be mutually arranged by all the Agents in Hong Kong." How was the determination arrived at, Mr. Dodwell, and by whom? A. By the agents at Hong Kong, they finding what the demand was.

Q. The authority for that was not sought from the London office? A. No, sir.

Q. The provision in paragraph 8 to the effect that "In the event of the 46 loadings specified above proving too few
302 or too many for the trade of any one year, the share of the four interests dividing these 46 turns shall be increased or reduced proportionately as may be found necessary?" A. Yes, sir.

Q. Was anything done under that provision of the agreement? A. It was changed in actual working, because it was found that you could not anticipate how many steamers would load in a year, so it became instead of being taken as per annum, it was made a series, simply a division of a loading; so we had one series of fifty-nine loadings, and when
308 that was completed we started another series, determined them according to this proportion. Sometimes there were nearly seventy steamers loaded in a year.

Q. In other words, it being so to keep up this average for each that this provision in Section 8 of this agreement was adhered to? A. Yes, sir.

Q. In control? A. In control, certainly.

Q. It says here, another provision with reference to how the reduction should be made, &c. Was that also adhered to? A. There was never any necessity for it.

Q. It says, "If a reduction should become necessary, the
304 U. S. & C. J. Line interest to reduce first?" A. Yes, sir; because there was an increase all the time.

Q. "If a reduction should become necessary, the U. S. & C. J. Line interest to reduce first, and the second reduction is to be made by the Dodwell interests. The other interests to follow in turn. On the other hand, should an increase in the number of sailings be found necessary, the U. S. & C. J. Line is to have the first increase, the Dodwell interests the second, and the other interests to follow in turn?" A. Yes, sir; that is so, that was carried out.

Q. That was carried out? A. Yes, sir.

Q. Now, at page 3 of this exhibit, paragraph 8, under the heading "In the Case of Extra or Emergency Turns not filled by and in addition to the regular schedule turns," I find that a blue pencil mark has been drawn through this exhibit? A. Cancelled, I presume. 805

Q. And inserted in the back under the head "Westward Agreement, page 3," a printed insertion entitled, "To supersede regulations passed December 30, 1907, &c., Rule A?" A. That is what has been written, I have not got it in this one; that is written above, is it?

Q. Yes? A. Yes, sir. You see it is not like mine.

Q. After the agreement was entered into, the provisions of paragraph 8 were adhered to, were they not, right along up to a certain time? A. They have all the time been adhered to. 806

Q. I find here in this exhibit an apparent cancellation of paragraph 8 and a substitution of Rule 8, entitled, "To supersede regulation passed December 30, 1907, and also amendment, &c. on the 18th of August, 1909." How about that, was the provision as originally passed superseded by this? A. That is in the case of extra or emergency turns over and above the fifty-nine already provided for, then such things shall be done; that has been lived up to. 807

Q. That does not catch my point. You will notice in the exhibit if you will turn back two or three pages, you will find with reference to the emergency matter, that the paragraph seems to have been cancelled in some form, a blue pencil mark has been drawn through it. Now I ask you if this addendum, or whatever you call it, that has been put in there, superseded it and took its place? A. I should think so, but I could not be certain about it; it must evidently be so.

Recess. 808

AFTERNOON SESSION.

Q. Mr. Dodwell, have you got the petition there? A. Yes, sir.

Q. Just turn to paragraph 9 of that Exhibit No. 8. There is a provision "that as soon as possible a schedule be drawn up in England showing the approximate dates for the despatches allocated to the various lines for the ensuing 12

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months." Were all provisions of that section complied with? A. All were complied with.

Q. And the conditions under paragraph 10? A. Yes.

Q. In paragraph 11 you find, among other things, "That if any one party should at any particular time be short of tonnage, and another of the Signatories have a surplus of vessels at the same time, the wants of the former may be supplied by the latter?" A. That is so.

Q. Was that adhered to? A. Yes, sir.

Q. In the general practice? A. Yes, one helped the other.

Q. In giving the preference provided therefor in the allotment, is that right? A. To the owners in the conference.

Q. And the provision in paragraph 12 with reference to the movement of the boats and the loading, etc., to be regulated by the Hong Kong agents, was that also carried out? A. Yes, sir.

Q. That was entirely directed and controlled by the Hong Kong agents? A. By the Hong Kong agents, yes, sir.

Q. The provisions of paragraph 13 with regard to loading, was that also carried out as provided for in the agreement? A. Generally speaking, it was, yes, sir.

Q. If there was any deviation from it, on what authority was it? A. If the Hong Kong agent, the Hong Kong committee, thought it was in the interest of the conference to call at fewer ports, all of the steamers mentioned here were not sent.

Q. With reference to paragraph 14, as to cargo reservation in paragraph 15, sufficiency of the cargo, were the conditions of those provisions also lived up to? A. Singapore advised Hong Kong of the tonnage they expected to require during the month, and that tonnage would be reserved for them, that space would be reserved for them; it may not be exactly an eighth of their capacity.

Q. But the general practice was to conform as near as may be? A. Yes, sir; to the basis.

Q. Insufficiency of cargo, paragraph 15, "any steamer finding a difficulty in obtaining all the cargo she requires to fill up without delay to herself and the steamer or steamers following her, her agents shall be bound, as far as possible, to fill her requirements by accepting cargo at any or all of the ports named in Clause 13." What was the practice under that? A. That was so; she had to.

Q. All the provisions here were complied with? A. Yes.

sir; she filled that, if she could not she went empty, with vacant space, each had to go; a great many steamers did go. 313

Q. Were the listed agents in paragraph 16 the agents that represented these lines? A. Yes, they were the agents that represented the lines. Amongst those, there are only two that are shipping people; all the rest are merchants.

Q. You say shipping people, do you mean whose business it was to arrange cargo? A. Whose business was confined to shipping.

Q. Who are those two? A. Hamburg-American, that is the Hamburg-American agents. 314

Q. At Hong Kong? A. At Hong Kong, and the American-Manchurian Line.

Q. And the others were merchants? A. All the rest were merchants.

Q. Who acted as agents for the line? A. Who acted as agents for the line.

Q. With the power to make freight commitments for the line as well as for themselves? A. Yes. At Singapore they were all merchants; at Manila they were all merchants; Malabar Coast they were all merchants.

Q. With reference to those last three ports, the merchants were also the agents for the line and empowered to make commitments for others? A. Yes. 315

Q. Besides themselves? A. Yes, sir.

Q. Then, generally speaking, Mr. Dodwell, all the provisions of this agreement were lived up to excepting where there was discretionary power to modify and when that discretionary power was exercised it was in pursuance to conference action? A. Yes, subject to the head office in London.

Q. If needed? A. If it was necessary it was referred to that board, who approved it. 316

Q. I notice spaces on the last pages of this Exhibit 8, a typewritten statement of a rule entitled,

"Westward Agreement—Page 3.

RULE 8a.

In the case of EXTRA or EMERGENCY TURNS not filled by and in addition to the regular schedule turns?" A. Yes.

Q. What is that? A. If extra turns were necessary, if

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317 the tonnage provided was insufficient and extra turns were needed then it was to be provided under these rules.

Q. Is this typewritten statement attached hereto a modification of Rule 8a? A. Yes.

Q. Do you know when it went into effect? A. It is an addition to 8, an addition really to 8.

Q. It says, "Rule 8a?" A. Yes, sir; it follows as Rule 8a.

Q. What are the two principal routes by which freight is carried from points in the United States to points in the Far East, what are the two principal routes for the carrying of freight from the United States to points in the

318 Far East? A. Suez is one, and the other is the Pacific.

Q. One is what they call the Trans-Pacific route that you have testified to? A. Yes, sir.

Q. And the other is the Suez route? A. The other is the Suez route.

Q. Which is the subject of this conference? A. No, sir; that is the Eastern conference; the Eastern is distinct from the Western. I have no interest in the Eastern.

Q. I am simply wanting to bring it out. Paragraph 3 of the petition in this case alleges that there are two prin-

319 cipal routes by which freight is carried from points in the United States to points in the Far East, namely, the route from the Pacific Coast ports westward across the Pacific Ocean, and the route from the Port of New York and other ports on the Atlantic Coast eastward via the Suez Canal. Is that right? A. Quite right, yes, sir.

Q. Do you know whether or not there are other important routes for that traffic? A. A certain amount of cargo presumably goes by Europe across the Atlantic.

Q. Are there any other important routes as such? A. No, I do not think so; the important routes are the two I have

320 named.

Q. The shipments by your firm as merchants have always been over these routes, have they not? A. Yes, sir.

Q. And it was impracticable to ship any other way? A. We have had shipments from New York to Liverpool and thence by steamer via the Suez Canal.

Q. That was very infrequent, it was much more practicable the other way? A. Most certainly.

Q. The only circumstance that would warrant any shipment by any other route by way of Liverpool would be under special circumstances? A. Yes, sir.

Q. In making shipments by the Trans-continental and Trans-Pacific, are they subject to other rates, are the rates quoted through rates, has that been the practice? A. I believe so. 321

Q. And the same with reference to the Suez Route, I mean the through route from New York? A. From New York, yes.

Q. Do you make any other rates with railroads over the Suez route? A. I have told you, Mr. Baldwin, that I have nothing to do with the eastward business.

Q. Do you know whether there is or not? A. I do not know whether they do. 322

Q. I said whom, if you do. In the homeward business you make through rates with the railroads? A. No.

Q. How is that? A. I do not suppose there will be twenty shipments made at a through rate to an interior point in the United States, I do not think so.

Q. You think the practice is to quote the rate to New York? A. Yes.

Q. But you would not say there have not been many instances where they do make a through rate? A Very few indeed. Cargo which goes to the interior points goes by the Trans-Pacific. 328

Q. Goods coming from the Far East to the Pacific ports, and the points of destination are very much diversified, are they not? A. Very much diversified.

Q. All over the United States? A. All over the United States.

Q. And in those instances the rate does include the delivery to the interior parts of the United States? A. That is so.

Q. And not confined at all? A. That is so.

Q. To go back again to the provisions of the agreement Petitioner's Exhibit 8, Section 19, it provides "That no steamer shall carry more than a total of 6,000 tons of weight and/or measurement from Japan, China and Hong Kong, except by the consent of all the parties in Hong Kong?" 324 A. That was before the pooling to prevent a steamer from picking out all the best cargo.

Q. After pooling, then what? A. After the pooling it did not matter, it was all equalized in the pooling.

Q. What was the date of the pooling, the same date, wasn't it? A. The first of April, 1905. No, it was not the same

AGE CUT OFF

325 date. That was after they had worked about a year and had found difficulties.

Q. Was that rigidly enforced up to the date of the pooling? A. No, it only began on the 1st day of April, 1905.

Q. I say, was that provision that it should not exceed 6,000 rigidly enforced? A. Yes.

Q. After the pooling? A. After the pooling there was nothing.

Q. Because there was no necessity for it, was that the idea? A. There was no necessity for it.

Q. Turn to the same page, paragraph 23. How about the
326 operation under that paragraph with reference to the penalties? A. Yes, there was never any necessity to enforce it.

Q. It never was imposed? A. It never was imposed, there was no breach.

Q. There was no breach of the contract and consequently no penalty? A. No penalty, no, sir.

Q. Has there been any revision of the pooling agreement that went into effect on the 30th of April, 1905? A. There have been many alterations, many modifications, wherever it was found necessary.

327 Q. Have you got any modifications in printed form of the pooling agreement as it now exists? A. No, I have none at all of these. If there are modications, they are not included in the copy that I have. The principles remained the same.

Q. Mr. Dodwell, I suppose you are very familiar with the pooling agreement? A. I am not, I am sorry to say.

Q. You know in general the terms of it? A. As I say, I am not a ship-owner, we are not a ship-owning firm, we have no interest at all in this as long as the owners we represent
328 are satisfied. They had the drawing up of this. It was merely a division among themselves of the earnings.

Q. Do you know whether or not the provisions of the pooling agreement have been practically adhered to? A. Practically they have.

Q. And are being lived up to at the present time? A. They are, yes, sir.

Q. You will notice in paragraph 13 on page 45 of the petition, the paragraph of the pooling agreement, it provides:

"Each steamer undertakes to give 14.5 cwts. lifting capacity per ton of 40 cubic feet of cargo space when required, failing which her units for pooling shall be reduced accordingly." 329

What was done under that provision? A. I could not tell you.

Q. It further says: "Unless otherwise mutually agreed the limit of size of steamers employed either Eastward or Westward shall be 10,300 tons of 40 cubic feet bale space, but steamers which have been regularly running in the trade for one voyage or more, or are now loading, are to be admitted to the pool even though in excess of the limit above?" 330 A. There has been some increase there.

Q. There has been? A. Yes.

Q. Do you know what it is, what it amounts to? A. Increased to 11,500.

MR. BALDWIN: Have you got a copy, Mr. Kirlin, of the agreement up to date, with the additional modifications?

MR. KIRLIN: No, I cannot say that I have. The agreement copy I have here has got two or three corrections; that is the one that he has just mentioned; 331 they are all unimportant. They are in red ink on the margin.

Q. Do you know why the size of the steamer was thus limited in the agreement, what the purpose was? A. In order to have them as near as possible on equal size.

Q. And also so that the one carrier would not have any distinct advantage over the other? A. Exactly.

Q. Mr. Dodwell, do you know of a meeting held in New York on or about July 14th, 1905, at 8 & 10 Bridge Street, in which were represented agents of the Trans-Pacific Lines 332 in the Asiatic business, and representatives of the Suez Lines? A. No.

Q. You know nothing of it? A. No, sir.

Q. Then your attention in London was never called to an agreement that was made between the agents of these Trans-Pacific Lines and the Suez Lines fixing an arrangement for uniformity of rates, as near as may be, between those lines for the Asiatic business? A. I would not be likely to see it, I am not connected with it, I have nothing to do with it.

AGE CUT OFF

383 Q. Do you attend the meetings of the London conference when you are in London? A. Sometimes, not often.

CROSS EXAMINATION by Mr. Kirlin:

Q. Mr. Dodwell, during the whole time that you have been in business in the Orient in connection with the business of Adamson, Bell & Co. or on your own account since, what has been the principal part of the business, merchants or shipping agents? A. Merchants business.

Q. Your business primarily and always has been merchant business? A. Three-quarters of it a merchant's business.

384 Q. Your firm is a very large buyer of tea from China? A. Of tea, yes, sir; very large; I believe we are the largest of all.

Q. You also deal and have dealt for many years in many other Eastern products? A. Almost everything that is produced in China.

Q. Both as importers and exporters? A. As importers and exporters, yes, sir.

Q. Have you made a short list of the different articles in which you have been largely engaged in exporting and importing, both ways? A. I ran this out roughly yesterday to give you an idea of the articles that occurred to me, I have no record to refer to, and those are what I put down. This is the list of the articles (indicating paper).

385

Q. Please read it off?

MR. BALDWIN: I object to it going in, on the ground that it is immaterial.

A. EXPORTS FROM CHINA, JAPAN & CEYLON.

	Tea	Camphor-Crude & Refined
	Straw Braid	Camphor Oil
386	Straw Hats	Menthol
	Chip Hats	Peppermint Oil
	Panama Hats	Essential Oils
	Rush Hats	Iodide of Potassium
	Wool	Sulphate of Ammonia, Imports
	Feathers	Superphosphates, Imports
	Furs, Skins & Rugs	Phosphate Rock "
	Bristles	Fertilizers—
	Horse Hair	many kinds "
	Human Hair	Nitrates "

Vegetable Wax
Isinglass (Agar Agar)
Chillies
Ginger—Preserved Tinned
Preserves
Loofahs
Soy
Firecrackers
Cassia
Matting
Silk Piece Goods
" Embroideries
Shells (M. O. P., &c.)
Des'd Cocoanut
Copra
Cocoanut Oil
Nutmegs
Cardamoms
Cinnamon & C. Leaf Oil
Cocoa
Chemicals
Wood Oil
Fish Oil
Bean Oil
Tallow
Raw Cotton
Hides
Bamboo Blinds
Tin
Manilla Rope
Tortoise Shell
Hemp Seed
Sessamum Seed
Peanuts
Canned Fish
Teak
Teakwood Furniture
Fans
Curios
Cement
Hoofs
Birdlime
Sulphur
Beans
Beancake
Gallnuts
Rice
Rubber

887

888

IMPORTS, CHINA & JAPAN.

Cotton Piece Goods (Manchester)
Cotton Piece Goods (American)
Raw Cotton
Flour
Lumber
Rubber
Manufactured Rubber Goods
Canned Fruit
Canned Salmon
Fresh Fruit
Dried Fruit
Salted Fish
Coir Rope
Naval Stores
Lubricants
Magnolia Metal
Fire Engines
Sewing Machines
Duck
Drill
Canvas
Lead
Pig Iron
Shipbuilding Material
Machinery of all kinds
Metals of all kinds
Tools & Fittings
Railway Equipment
Rails
Electric Motors and Supplies of all kinds
Motor Boats
Automobiles
Motor Tractors
Agricultural Machinery
Ice Making Plants
Flour Mill Plants

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Knitting Machines	Sugar Mill Plants
Typewriting Machines	Electric Lighting Plants
Safes	" Pumping Plants
Hardware of all kinds	Quicksilver
Fire Clay	Coal—Cardiff
Fire Bricks	Coal—Japanese
China Clay	" U. S. Wash
Matches	" B. C. Comox
Mineral Waters	Coke
Acetone	Fertilizers of all sorts.

342 Q. About how many large merchants and shippers are there shipping by these conference lines, how many constitute the principal shippers shipping the great majority of the products?

MR. BALDWIN: Which way?

MR. KIRLIN: Westward.

A. In China and Japan shipping westward to New York, eight or ten, I should think, large firms.

Q. Of which your firm would be one? A. Say seven or eight, something like that.

343 Q. It was in the late 70's or early 80's that the firm with which you are connected, Adamson, Bell & Co., and the late firm of Russell & Co., the predecessors of Shewan, Tomes & Co. began to make arrangements with other ship owners for services westward to New York, was it? A. Yes, sir, for each year.

Q. What was the occasion of your going to England to make those arrangements? A. To avoid competition amongst these owners.

Q. What was the nature of the service before you began to make these arrangements? A. The agents of these regular
344 lines were changed frequently; sometimes they were shipping people, sometimes they were merchants; sometimes they understood shipping, sometimes they did not, with the result that the owners' interests were often sacrificed.

MR. BALDWIN: I object to conclusions.

THE WITNESS: There was no unanimity of work, no stability of rates. It was for that purpose that we planned to make these arrangements and we succeeded.

Q. Was it for the improvement of your position as merchants that you undertook that work? A. Partially

partially as merchants and partially as representing the owners. 345

Q. Just go ahead and give us a short account of the development of the trade, so far as the transportation end of it is concerned, from that time down to the year of this controversy in 1904, relative to the transportation business? A. A great many lines, a great many different owners, would send steamers out to China and Japan and endeavor to get them loaded back.

Q. Send them out with cargo? A. With cargoes, it might be of coal, of salt, of phosphates, some of the bulk cargoes, and they would then want to load them back. They were 346 outside owners, not regularly in the trade, not loading a general cargo out from Great Britain or from the continent or from New York, and they would take any rate that they could get to get back if it was out of season, out of the sugar season or out of the rice season. When they could not get a full cargo of rice from Sagon or from Ragoon, or a full cargo of sugar—

MR. BALDWIN: I object to the expression of the mind of any one other than the witness, on the ground that it is incompetent, immaterial and irrelevant. 347

THE WITNESS: When they could not get full cargoes of this nature, then they would see whether by cutting rates they could not load tea or some other China product. That continued for many years, the regular ship owners, that is, those running regularly from England, got very dissatisfied, because rates by one steamer would be three pounds or four pounds home, another steamer soon afterwards would load at 20 shillings. It was most demoralizing, not only to the ship owner, but to the merchant. We had the greatest difficulty at times like that, merchants had, to find 348 our competitors were trying to load, or would probably be able to load a steamer for 20 shillings, putting their own cargo on board, when the rates by a steamer which had left a fortnight before had, perhaps, been 40 shillings. The moment the tramp, the outside steamer, had gone away, and there were no more to load, the rates would be advanced again. That was the sort of thing that was going on all the time.

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349 Q. Point out a little more definitely what the disadvantage was to merchants?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial, and on the further ground that he can only state what the disadvantage was to himself.

MR. KIRLIN: This is all taken subject to your objection.

MR. BALDWIN: Put it in as incompetent, irrelevant and immaterial, and where it involves the conclusion
350 of somebody else necessarily as incompetent.

A. If a merchant desires to make shipments of goods, and he has one item of the cost, such as freight which may vary to that extent, he must have a very large margin of profit if he is to cover himself against possible loss operating to such a drop as that. Merchants have to buy in advance in anticipation of the home, the consuming markets, they have to reckon, calculate what it will cost them, and they are against this fluctuation in freight. They have many other difficulties to get over, exchange in China is a very important one.
351 When you add freight, the fluctuations in freight in addition to the fluctuations in exchange and the fluctuations in the market, the products, you can see what a merchant would feel like when the freight were jumping up and down in this sort of a way, and if he could get rid of one of those troubles, it would enable him to do business much better, if one of those difficulties was eliminated. Now, the freight question has been eliminated, the exchange question has been largely eliminated, except from China. From Japan it has been eliminated, and from the Philippines it has been eliminated, and from the Straits it has been eliminated, it is only in
352 China now the exchange has to be taken into account. Every merchant that I have spoken to has emphasized the necessity for having stability in the matter like rates of freight.

Q. And that is your own experience? A. That is our own experience.

Q. These arrangements that you made with the English owners under contracts, were the first step towards the provision of regular service, is that so? A. That is so.

Q. And that movement to get that regular service was inaugurated by the mercantile houses in China? A. Yes, that is so.

Q. That was for your own protection and advantage? A. That was for our own protection, to protect regularity of good tonnage. 353

Q. That arrangement lasted a number of years, and what was it that broke it up finally? A. The advent of more outside tonnage.

Q. By outside tonnage you mean what we have been in the habit of calling in the record here, tramps? A. Tramps, that is the term.

Q. What was it caused an increase in the outside tonnage? A. Presumably there was a greater demand for some of the so-called bulk cargo, like coal, phosphates. 354

MR. BALDWIN: Is this eastward?

THE WITNESS: That would be eastward, sir.

Q. That brought the vessels out there, and of course they wanted cargoes to go home? A. Yes, sir.

Q. And took such rates as they could get in order to get back to the western market? A. Yes, sir.

Q. These vessels outward did not go from this country, I take it? A. Some went from here and Florida, some would go from Florida.

Q. And England with coal? A. England with coal. 355

Q. And the continent with salt? A. Yes, the continent with salt.

Q. With the advent of the outside tonnage, what became of the tonnage that you had theretofore with the English owners for the furnishing of the regular service? A. The owners got dissatisfied because there was nothing settled about the rate of freight.

Q. That is, I suppose they would have a vessel loading and a tramp would come along? A. And lower the rate of freight. 356

Q. They would have to lower theirs? A. Or go away partially empty.

Q. In consequence of that what did your English friends, the regular liners, do? A. Many of them quit the trade entirely, dropped out of it, many of them.

Q. And left it to the outsiders? A. Yes, sir, and a few others, a few of the old regulars.

Q. The tramps, of course, were far greater than any of the regular liners? A. Yes, sir.

Q. And far in excess of the regular tonnage? A. Yes, sir.

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357 Q. In your experience do they fix the rates? A. Yes, sir.

Q. They rule the market? A. They rule the market.

Q. What was the condition along between 1891 and 1904? A. The outsiders had so cut into affairs that it became necessary for something to be done by those who looked upon themselves as regulars to try and preserve that trade.

Q. Who instituted the steps looking toward improvement? A. I think I was the first to make the movement.

Q. And who associated with you? A. Royden, who, up to that time, had been one of the outsiders, one of the competitors; Shewan, Tomes & Co. had always been with us, working
358 with us as far as possible as against the outsiders.

Q. What was Shewan, Tomes & Co.'s principal business? A. Shippers, merchants, importers, exporters.

Q. They were one of the largest merchant firms in China? A. Yes, sir, certainly.

Q. For many years? A. Yes, sir, certainly.

Q. And are still? A. Yes, sir. Russell & Co. was one of the biggest firms out there.

Q. What other merchants were associated with you, if any, in getting a regular system established prior to 1904? A. Jardine, Matheson & Co.

359 Q. What was their standing? A. They were looked upon as No. 1, a very big firm.

Q. Merchants? A. Merchants. Arnhold, Karberg & Co., Carlowitz & Co., they were all big merchants.

Q. These negotiations that you instituted were in behalf of and in concurrence with all these large China merchants firms, were they? A. Certainly.

Q. Whom did you work with in England on the ship owners' side? A. With the Roydens, they were the principal people; the Shewans, the Anglo-American Oil Company, who were
360 loading cargoes of oil out from here and loading cargoes, general cargoes back here from China and Japan, they felt the competition very severely. The original signers of this conference, those were the four firms, Shewan, Royden, the Anglo-American Oil Company and ourselves.

Q. Those negotiations resulted in the formation of the conference covered by this first agreement of July 27, 1904, marked Petitioner's Exhibit 7? A. That is so.

Q. At the time that arrangement was made, was it considered by the merchants a fair and reasonable arrangement for the condition of that trade?

MR. BALDWIN: I make a special objection to that as incompetent, irrelevant and immaterial; it calls for a condition of mind of others than the witness, and therefore it is based upon hearsay, and is irrelevant. 361

A. It met with satisfaction from a great many shippers in China and Japan.

Q. Who was it individually that had most to do with the drafting up of the agreement and terms embodied in the agreement? A. In London I had a hand, but I think Mr. Dermer, one of my co-directors, I think he had the greater part in the detail, the arranging of all the conditions.

Q. At that time was there a conference in existence in relation to the trade between the Far East and European ports? A. Yes, sir, certainly. 362

Q. Did this follow along the general lines of the European conference arrangement? A. We did not see the European conference arrangement, we did not work along with them anyway, not as far as the drawing up of the agreement, we did not ask them anything and had nothing to do with them.

Q. You were not connected with them in any way? A. Not in any way. 363

Q. When did you begin operations under that agreement, Petitioner's Exhibit 7? A. We began operations the beginning or end of July, 1904.

Q. Did you at the very outset issue these offers to shippers of so-called rebates for support? A. We did. The first circular we issued to them dated the rebates back to the beginning of May.

Q. And it was how many months before you actually began operations? A. I should say three months.

Q. During those three months how had the merchants been shipping? A. Mostly by vessels which we were interested in, which the conference had been interested in. 364

Q. Which the members who composed the conference finally agreed on had been operating independently before that? A. Yes, sir, and during those three months eight steamers were loaded, had been loaded, and the rebates which we offered to shippers if they would accept our terms ran to some six thousand pounds.

Q. Was there any substantial opposition on the part of merchants to the establishment of this system in the beginning? A. Very little on the part of merchants.

365 Q. Was it a system that was already known in China in other trades? A. It had been working there for twenty years in China.

Q. So they were thoroughly familiar with it? A. Thoroughly familiar with it.

Q. What results were immediately accomplished by the formation of the conference of 1904? A. The first result was opposition from the American-Oriental Line, the Houlder firm, Howard Houlder & Partners. That opposition continued until December, from July until December, then we thought it was best to bring them in. You may say he fought
366 his way in.

Q. In the meantime what kind of a service had you got established? A. We had been sending steamers away very frequently, and very satisfactorily from a merchant's point of view, very unsatisfactorily from the ship-owner's point of view, because the rates were very low owing to the competition that was going on.

Q. Your first agreement did not accomplish the object of securing suitable rates? A. It did not.

Q. Then the Houlders were taken in? A. The Houlders
367 were taken in, and the second agreement was made.

Q. That is Exhibit 8? A. Exhibit 8.

Q. Then I suppose fresh circulars were issued? A. Yes, sir, including Houlders.

Q. Including Houlders? A. Yes, sir.

Q. These first circulars, I take it, were issued by the individual agents and contained an authority to ship by the other conference line vessels without invalidating their claims? A. Certainly.

MR. BALDWIN: You mean claims for rebates?

MR. KIRLIN: Claims for rebates, yes.

368 Q. And when the Houlders came in their names were naturally added to the list? A. That is so.

Q. In the first place had the rates been remunerative from a shipping standpoint during this period of fighting?

MR. BALDWIN: Objected to as incompetent, irrelevant and immaterial, and also a state of mind on the part of the witness, and no basis for the statement.

A. Very unremunerative.

Q. Did your firm, although primarily merchants, have interests in shipping? A. We had investments.

Q. You were shareholders in companies owning various vessels? A. Some of them, not all. 369

Q. How far back do those investments extend? A. It extended back, I think, to 1896.

Q. So that you had practical knowledge of the question whether these rates you were obtaining were remunerative, or not? A. We had indeed.

Q. When competition is going on which results in fighting or unremunerative rates, what is usually the result?

MR. BALDWIN: I object to that as speculative, in addition to my other objection. 370

Q. What is the result of the long contention or fighting? A. Exhaustion on the part of the weaker part, the weaker party is generally driven out.

Q. That had occurred on numerous occasions in your experience there prior to 1904? A. 1904. The Shireine, Jenkins & Co. owners retired, they had been running regularly before that; the Glen Line, MacGregor, Gow & Co., they retired; the Castle Line, Thomas Skinner & Co. went out of business; the Ben Line, William Thompson & Co. withdrew from the New York berth, confined their attention to the European berth, in the European conference. 371

Q Were these all lines of good standing, operating a good class of ships? A. Very nice, fine boats, very fine cargo-carriers.

Q. Suitable for your trade? A. Perfectly so.

Q. They were succeeded by tramps very largely? A. Yes, sir.

MR. BALDWIN: Do not lead him.

Q. How did the number of ships dispatched during those fighting times compare with the number that had been dispatched when trade got in a more orderly state after the organization of the conference? A. Considerably less. During the fighting time at the low rate fewer steamers sailed. 372

Q. Due, I suppose, to the disinclination of the owners to give more tonnage in bad times to keep the trade?

MR. BALDWIN: Objected to as leading.

A. And the merchants not doing a satisfactory business.

Q. When did you come to the establishment of the first tariff under the conference arrangement? A. It must have

873 come immediately following the establishment of the conference. I never was able to find any original of that in Hong Kong, say in July or August, 1904; I was never able to find any and was never able to give any to the Royal Commission. Those that you have were the first I was able to find.

Q. During that year you had competition, that is during 1904 and up to the early spring of 1905 you had the competition of the American-Oriental Line? A. Yes, sir, that is so.

Q. But you nevertheless used a tariff, did you? A. Possibly they did not use a tariff, that may be the reason there
874 was not; we had to be guided presumably by what the opposition was doing.

Q. If you had one, in the nature of things, you could not adhere very rigidly to that? A. It would be impossible to do so.

Q. When did you come to establish the first one you have been able to trace after the A. & O. Line was taken in? A. The first date that I have been able to get hold of is 1907.

Q. There had been one before that, I suppose? A. I think there must have been.

875 Q. In 1905? A. I should think so, but I have no copy, and we have no copy in London.

Q. At all events, after the A. & O. Line came in, were the rates raised or readjusted? A. Undoubtedly; they would be brought back to normal conditions before the competition.

Q. And the committees which did that are enumerated in the memorandum? A. The Hong Kong committee would make up the tariff which would embrace all China, all Japan, I believe their procedure is to write to Shanghai, and say, "We propose such and such." The agents of all these vessels of these owners in Shanghai would meet together and would
876 look over and see whether in their opinion these rates were right. The same thing would apply in Kobe, the same thing would apply on Yokohama. Their rates would go to Hong Kong, and then the tariff would be issued.

MR. BALDWIN: I move to have stricken out what the agent presumably would do, or what they did do on the ground that it was not in his presence.

Q. Was that the method of dealing with the subject out there? A. That was the method.

Q. You have been out there? A. I have been out there three times since the conference. 877

Q. Give me the names of the people who actually proposed these rates that went into the first tariff? A. The first tariff?

Q. Yes, established after 1905? A. The agents would be given here, these would be the people here.

Q. That is, these people who were appointed by the agreement as the agents in Hong Kong? A. Yes, sir.

Q. That would be the agents of the Hamburg-American Line, Jardine, Matheson & Co.? A. The agents, and T. B. Royden. 878

Q. Dodwell & Co., Limited, Shewan, Tomes & Co., Standard Oil Company, Arnhold, Karberg & Co.? A. That is right.

Q. These firms, of whom four, you say, are merchants primarily? A. I think five of those six are.

Q. The Standard Oil and the Hamburg? A. The Standard Oil, don't you call them merchants?

MR. BALDWIN: We do not here.

THE WITNESS: We do, we think they are very big merchants. 879

Q. Five of them are merchants? A. Leaving the Standard out, then.

Q. Four of them are? A. Four of them are.

Q. That first tariff then was based on rates proposed chiefly by merchants? A. It was.

Q. Submitted by them to the agents of the lines in the different ports? A. Yes.

Q. How was the tariff at Singapore started after the formation of the conference of 1905? A. Until the agreement of 1906, I think it was, a special agreement of 5 per cent.. there was a great deal of fighting there. Any tariff that was formed would not be put in force until after the new agreement had been made out, the special agreement. 880

Q. After you had pacified the big shippers? A. After we had pacified the big shippers, then they came in and the new tariff was formed.

Q. And formed by the Singapore committee? A. Formed by the Singapore committee.

Q. Those named in this Exhibit 8? A. Yes, sir.

Q. The names given here are Behn, Meyer & Co., agents

381 of the Hamburg-Amerika Linie, and also of the Union S. S. Co. of Hamburg and T. B. Royden? A. Yes.

Q. Paterson, Simons & Co., agents of Dodwell? A. Yes.

Q. Gilfillan, Wood & Co., agents of Shewan, Tomes & Co., Standard Oil Co., agents of Anglo-American Oil Co.? A. Yes.

Q. Boustead & Co. and Huttenbach Bros. & Co., agents of the American and Oriental Line? A. They were joint agents.

Q. They were the people who made the rates? A. They were the people who made the rates, yes.

382 Q. And of that number— A. Eliminating the Standard Oil, all the rest are merchants, or were merchants.

Q. Who made the rates for the Manila trade? A. The Manila rates were made in Hong Kong, but nothing was done about that until May, 1906; I do not think we served Manila or the Philippine Islands regularly until 1906. Up to that time they loaded anyhow. They got their cargo carried forward anyhow they could.

Q. When a tariff was established finally from the Philippine Islands— A. It was in consequence of some of the big
383 shippers in Manila coming to us in London and saying, "Why don't you extend the conference to Manila?"

MR. BALDWIN: I ask to have that stricken out.

Q. It was extended? A. It was extended. This is of my own knowledge, I saw the men.

Q. Do you know their standing as shippers in the Philippine Islands? A. Yes, pretty well.

Q. Then when the conference began to serve the Philippines the tariff for those Islands was made by the Hong Kong conference? A. By the Hong Kong conference.

384 Q. By the same people who made the rates for China and Japan? A. Who made the rates for China and Japan, they being in consultation with the big shippers.

Q. Who made the rates from the ports on the Malabar Coast? A. Those were made in London.

Q. Made by these— A. Made by the head office in London in conjunction with the London houses who represented those agents along the Malabar Coast. Volkart Bros., Hamburg-Amerika Linie, Union S. S. Co. of Hamburg and T. B. Royden; Pierce, Leslie & Co., Ltd., Dodwell & Co., Limited; Volkart Bros., Shewan, Tomes & Co.; Pierce, Leslie & Co.,

Ltd., Anglo-American Oil Co.; Aspinwall & Co., American and Oriental Line. 385

Q. Those rates you say were made by representatives of those houses in London? A. Yes, sir.

Q. In conjunction with the London conference? A. Yes, sir.

Q. And I take it were agreed on? A. They were agreed on.

Q. What has been the procedure of changing the tariffs either bodily or on specific commodities during subsequent years from the establishment of the first tariffs that were promulgated under the conference until the present time? 386
A. Generally speaking, if the merchant found that the rate was too high and was stopping the business, he would go to one or the other of the agents and report, "I cannot do business." That agent would report to the Secretary of the Committee in the port where he was, and if they could not settle that themselves it would be referred to Hong Kong, who would settle it if they could. If it was a very big question, Hong Kong might then send it home to London. That would be settled. Now, that would apply either to raising or to lowering. If it was agreed to lower a rate of freight, the reduction took place immediately. If it was agreed to 387
raise a rate of freight, three days were given in which all shippers could declare how much cargo they had definitely sold ahead, and when those contracts were shown to be bona fide, they were protected by the conference at the old rate.

Q. That is, as to those contracts the new rate would not be put into force? A. The new rate would not be put into force. Just now the custom is three days in which to declare shipments to be made within three months, shippers know now they must not sell forward cargo for more than 388
three months without first coming to us. If they come to us we back it up, we give them the rate.

Q. For a longer period? A. For a longer period, possibly up to one year.

Q. That refers to cases where a merchant in a large transaction or some sale which would extend over a very long period? A. Yes, sir. Very often it is the case a merchant will sell forward. Take india rubber, for instance, he would sell five tons a month over a year. He wants to know whether his rate of freight is going to be the same, other-

389 wise how can he name a price to sell. He comes to us and says, "I want to make a contract so and so, the rate of freight is 60 shillings." All right, very well, book it, put it down. The rates may have gone up in the meantime to 75, but has been protected at the 60 shillings rate. Merchants have appreciated what has been done to helping, not to hindering.

Q. At different ports where the committees have jurisdiction, are the shippers and the agents largely the same people? A. Yes, they are to a certain extent; the agents are large shippers; they are not the only large shippers.

Q. Do you make any effort to keep in close touch with
390 the other shippers who are not agents in matters of freight rates? A. We are seeing them every day.

Q. And you consult them in regard to proposed changes? A. Yes, sir.

Q. In the freight rates up or down? A. Yes, sir.

Q. Before you make them? A. Certainly.

Q. Do you obtain their concurrence, or endeavor to do so? A. We endeavor to do so, I think we do obtain it. I have not been there myself, but I understand that is what has happened.

391 MR. BALDWIN: I move to strike that out as hearsay, on the ground that his understanding is not evidence.

Q. Now, you said that notwithstanding the authorities which the agents had in dealing with rates that the agents in London, or the owners in London, would still have the final say? A. Undoubtedly, they must have.

Q. That is, they are the ones that are to receive the freight and to say whether you agents in the East are making the rates too low, or not? A. That is so.

392 Q. But in practice has there been any conflict? A. On the contrary they have been very willing to accept our advice.

Q. And have they done so? A. They have.

Q. You said that you were not out there? A. Not when these contracts were made.

Q. But you understood that merchants were being consulted?

MR. BALDWIN: I object to that as hearsay and incompetent.

Q. Are you in a position to know whether the shippers have objected? A. They certainly have not objected; we had no complaints. 893

MR. BALDWIN: I object to that as hearsay and as incompetent.

Q. I think they would be pretty quick to object if they did? A. I think so.

Q. I suppose you have no list with you by which you can tell us what the development of trade has been since the conference has been in effect, have you, as to an increase in sailings or tonnage? A. I am afraid I have not. The paper I have here gives the units of tonnage loading in the various years, showing how much it had increased in 1905 from 313,300 tons to 591,200 tons. 894

Q. I will get to that a little later in more detail. Have there been any improvements in the service westward in consequence of the formation of the conference, and if so, in a general way what have they done?

MR. BALDWIN: I object to that in addition to my general objection, as calling for a conclusion of the witness. 895

A. The improvements which have resulted have been very manifest, a great many more sailings have been made. The regularity has pleased merchants, a steamer leaving say every five days, giving them an opportunity to ship their cargo as soon as it is ready packed instead of having to store it away and wait for weeks, maybe, until a steamer came along. Now it can be shipped off regularly as it comes forward. They save a great deal of interest in that way and in storage; they can conduct their business, a merchant can conduct his business at a very much less warehouse accommodation than before. The steamers themselves are much better than they use to be in the trade, a better class, they make a better passage; the captains, the officers, being regularly in the trade, know what they are doing, they understand what they have got to do in regard to stowage, how to arrange for it, and when you are dealing with a multiplicity of articles such as we have to deal with on board a steamer, it is very necessary that the master and the officers should understand something about it. 896

Q. So that one class will not injure another? A. Yes,

397 sir; exactly; in a ship there are so many things to be thought of, all these things have to be done, the speed of the ship, the speed has been improved, the rates of insurance on the cargo have been reduced because of the regularity of the line, the insurance companies gladly give a lower rate by our vessels, the conference vessels; the number of loading ports has been increased enormously; I believe something like now fifteen that we regularly call at, not every steamer, we are not so foolish, but on an average, I think, a steamer calls at six ports; the discharge ports on this side, Boston has become almost as frequent a port of dis-
398 charge as New York; Philadelphia, Baltimore, when required, sometimes shipments are asked for. We do all we can to oblige the shippers, carry forward directly rather than have it taken to New York and transshipped with all the extra cost and the extra damage that may occur in handling it. All shippers, whether they are large or whether they are small, are put on the same terms, and that has existed from the start in 1904 until now, with the exception of this Singapore; the only thing that I felt when I went before the Royal Commission that I could not defend and
399 could not justify. The report of the Royal Commission will show what they thought of it. The shippers, as I said before, have been able to make their sales ahead, because they can book their space at a fixed rate of freight. That can only be done by a regular line; you cannot do that by outside boats. Low value cargo, we carry it at lower rates than any outsider will carry it for, and because we have done this it has created and developed quite a trade in these lower class articles. A tramp looks at the average rate of freight, he wants the average rate for this low class of cargo. We are willing to carry the low class of cargo at the low rate and
400 average it up with the high class of cargo, we can do it; we are supplying it.

Q. I think you said you lowered the rate on the first class cargoes when you established the tariffs? A. As far as my memory goes we did do so.

Q. Had they, as a fact, and if so, for what reason, been quoted abnormally high during the fight period?

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MR. BALDWIN: In addition to my general objection, I wish to add as to stating a condition without any comparison whatsoever.

A. During the fighting period every man tried to get the best cargo, he did not want to carry the bad cargo; the consequence was if anybody wanted to ship his bad cargo he had got to pay for it, got to pay possibly more than for the good cargo. If you wanted to carry a cargo on which there are fewer claims you would accept a lower rate of freight than to carry forward a bad cargo, which might damage your ship and damage other cargo and land you with a lot of claims at the end of it. 401

Q. Are the bad classes of cargo that you have referred to cargoes which won't stay in the packages during transit? A. Yes, they have a bad habit of coming out, coming out of their outside packages. 402

Q. Are you acquainted with the quality of gambier? A. Yes, sir.

Q. What is the commercial volume of gambier? A. The commercial volume was immense, the gambier was cut in blocks and put in a straw mat.

Q. What is it? A. Gambier?

Q. Yes. A. I think it is more of a dye, but I cannot tell you, I am not in the trade myself. It is a Straits article, and we do not operate in the Straits.

Q. It comes on board in a block? A. It comes on board in a block, which is covered with a mat and tied up with a rope, and it contains a large proportion of water; that water becomes yellow naturally from the contents of the gambier, and it leaks out and damages the other cargo. 403

Q. During transit? A. During transit, unless you take very great precautions.

Q. That is ordinarily shipped at Singapore? A. At Singapore.

Q. And your shippers coming this way begin their loading at Yokohama? A. Probably five ports before they get to Singapore. 404

Q. You get to Singapore with other cargo already in, and are asked to take this difficult class of cargo above it? A. Yes, sir; we have to arrange the carriage of gambier, and the Singapore agents invariably advise Hong Kong how much will be wanted during the month, how much gambier is likely to be shipped. The steamers which are allotted to stop at Singapore must keep an allotted space for that.

Q. And is jelutong of a similar character? A. It is even

405 worse, I think, even worse; it contains so much more moisture.

Q. Where is that shipped from? A. Also from Singapore.

Q. Is space saved for that? A. We try to do so.

Q. That is a low class rubber? A. That is a low class rubber.

Q. And carries a low freight? A. Carries a low freight.

Q. If that is a difficult and expensive cargo to handle on account of liability to claims, why is it you take it for a low freight? A. Because of the value of it, it is of a
406 very small value; if we put a high rate on it it would be stopped entirely.

Q. In fixing your freights in the Far East, is count taken of the value of the articles? A. Yes, sir; and also of the space occupied.

Q. And on articles of low value which cannot stand the high rate, a relatively moderate and lower rate is given to encourage shipment? A. That is so.

Q. It is in the reservation of matters of that sort, I take it, you desire officers to have knowledge of stowage? A. Oh, certainly.
407

Q. And it is to the advantage of the trade to have vessels constantly in it with the same officers handling the same things? A. Yes, sir; the same class of cargo.

Q. And that is one of the objects or results of the conference that has been accomplished? A. It has been accomplished.

Q. And having experienced men in the conference steamers? A. We keep the same men as much as possible; we cannot do it always, but with regular steamers our aim is to keep the same men.

408 Q. Has the quality of the steamers improved any under the conference regime? A. Yes, sir.

Q. In what way? A. In the speed, the capacity, the general class, a better class of boats, a more seaworthy standard, a great advance on the outsider, the ordinary tramp, which before was doing a great deal of the business, and all the new boats they are improving all through, each one as he builds is building a faster boat, a better boat.

Q. You say insurance companies have taken notice of the improvement of your vessels? A. They have done so, distinctly.

Q. To any material extent? A. To a material extent, a difference, I should think, on some cargoes from a quarter of one per cent. up to one per cent. even cheaper by our regular steamers than by the ordinary outsiders. 409

Q. Prior to the formation of the conference had these minor ports that you have referred to been served at all? A. Not at all, they were not served at all.

Q. Not at all? A. No left out.

Q. Why is it in competitive times the competitors would not go to all the ports where their cargoes are shipped? A. It costs a lot of money to call at a port, you have your pilotage, all your expenses going in and going out, there is the extra delay, and in addition most of these small ports which we would not call at had only small quantities of cargo to give us, perhaps two or three hundred tons. By the time we had paid the expense of going into that port there would be nothing left from the freight, and we did not go in. 410

Q. How many ports in the former days, in the fighting days, was it customary for a steamer to call at? A. Four or five.

Q. And how many ports of discharge did they stop at? A. One, I never heard of them going elsewhere than New York. 411

Q. Why didn't they stop at Boston, Philadelphia and Baltimore, as you now do? A. Well, I suppose they did not want the double expense of the thing, so they cut everything down.

MR. BALDWIN: I ask to have stricken out what he supposed.

THE WITNESS: They did not call because of the extra cost.

MR. BALDWIN: I make the same objection.

412

Q. Was that extra cost very material on any individual ship? A. I do not know, it must have been expensive.

Q. Since the conference, how is it you arranged it so that all the ports it could serve, not every ship goes to all the ports, of course? A. The committee in Hong Kong decide which vessels shall go to various ports, taking care they provide tonnage to call at these ports as the cargo accumulates there. That they are enabled to do now because of this pooling affair. The extra cost occasioned to the one making these calls is equalized in the pool.

413 MR. BALDWIN: You mean being borne by all?

THE WITNESS: Being borne by all of the different owners, they all share it. In the same way each one shares in the good rate of freight which is obtained through the pool. He also shares in any bad rate through the pool. Without the pool, therefore, we could not get owners to work, they would not go to these ports, we had to make them. When I say "we," my firm had to make the owners get together and get a pool because they were all kicking about calling at so many ports, carrying this beastly cargo, as they
414 put it, some of the bad stuff, and they did not want to do it.

Q. And there was activity by the merchants also, was there? A. It became a necessity, they could not work without it, they never could have done it.

Q. About how many ports does each of the ships call at now? A. On an average, six.

Q. And ports of destination? A. Two.

Q. Whatever two there may be the greatest demand for? A. Yes, sir.

415 Q. Out of the four large Atlantic ports? A. Yes, sir.

Adjourned to Friday, May 16, 1913, at 10:30 A. M.

NEW YORK, May 16, 1913.

Met pursuant to adjournment.

Present—GILBERT H. MONTAGUE,

Special Examiner.

APPEARANCES:

416 Same as before.

GEORGE BENJAMIN DODWELL, resumed the stand.

CROSS-EXAMINATION continued by Mr. Kirlin:

Q. Mr. Dodwell, at the close of the examination yesterday, you were pointing out that it had become possible to get service at minor ports through the medium of pooling amongst the members of the conference lines; about what time was the pooling begun? A. About a year after the commencement of the conference had begun, in April, 1905.

Q. Won't you explain to us the origin of the pooling ar- 417
rangement? A. We had found that the ship owners objected to calling at so many ports of loading.

Q. By "we" whom do you mean? A. By "we" I mean Dodwell & Company, Limited. I speak for myself. It was too expensive for them. Some owners would have to call perhaps at eight or more ports; another vessel following soon afterwards would perhaps only call at two or three. That was one difficulty. Another difficulty was the class of cargo. Some ship owners objected strongly to carrying the dirty cargo, the awkward cargo. They had no means of covering themselves against the claims. They had to carry this cargo 418
at lower rates of freight,—the common cargo,—at lower rates of freight, and we found that they did not want to carry it, and were objecting to carrying it.

MR. BALDWIN: This is all subject to my objection?

MR. KIRLIN: Yes, certainly.

MR. BALDWIN: For all purposes?

MR. KIRLIN: Yes.

THE WITNESS: We wanted to get over these difficulties, and we suggested that they must pool their earnings, their gross earnings; they must make allow- 419
ances to one another for the cost of going to all these different ports. It could only be done by a pool which was agreed to by all of the owners, which would equalize these differences. That was the origin of the pool. That suggestion for the pool came from me personally in London.

Q. Was it your interest as a merchant, or your interest as agent, that prompted you to make this suggestion? A. Primarily as merchants; I have already testified that our interests are much greater as merchants than as shipping agents.

Q. And you wanted to get off your own shipments from 420
these minor places? A. Wherever it might be; we did not want to have these difficulties, one ship owner refusing to carry this stuff. Perhaps we would have to hold it two or three months before we could get the cargo shipped. That was the experience of the first year's work.

Q. What did you do in pursuance of your own thought, and who acted with you in arranging the pool? A. I discussed it with the members of the conference in London. They came to the conclusion that it was necessary. They

421 could never have a regular service without this pool. They could not supply those ports without a pool which would equalize to all of those concerns the expense. We got together, and the pooling agreement was then formed, or made up. When it came to the making up of the pooling agreement, I had little or nothing to say. That was a matter for the owners themselves to decide how they would equalize these differences.

Q. The object of the pool, as I understand your statement, was to secure service to those minor ports with greater regularity, rather than a money making scheme? A. Certainly
422 it was; it was to give a better service.

Q. Did it have the effect of giving a better service? A. Undoubtedly so; we never had these troubles afterwards. The owners agreed to carry the good cargo, and the bad cargo as well as the good cargo.

Q. Could the service that was achieved through the medium of pooling, have been accomplished in any other way? A. I do not see how it could have been.

Q. Will you be a little more specific and point out in more detail what you consider the commercial necessities of pooling in that trade; what they arise from? A. The only points
423 that I have already mentioned; that is, like the ports of call, and the classes of cargo. There was also one other point which was very important; no one liked a steamer to leave the last loading port with unfilled space. He wanted a full ship. He wanted a full cargo from Singapore, presuming that was the last port of loading. He didn't want to get away from there until he was full. He blocked every steamer that followed. All the steamers from Yokohama were stopped, because he would not go away from Singapore unless he was in some way compelled to go on. It made a block,
424 and an expense to every vessel following. It means that higher rates of freight must be paid. If we could avoid that detention, it would certainly mean we could continue at a more moderate rate of freight. The pool helped that. We had instances of vessels moving from Singapore without a full cargo after the pool was established; on one occasion I know a vessel left Singapore 2,500 tons short of a full cargo.

Q. Under the pooling arrangements are the ships dispatched according to their schedules, whether full or not? A. They are.

Q. And the loss sustained by going without that full cargo is equalized? A. Divided among all the owners of the pool. 425

Q. The burden falling proportionately on all? A. Falling on all.

Q. You said there was objection before the pooling to the taking by an individual owner of the rougher and poorer classes of freight, those paying the lower rates? A. Yes.

Q. What advantage, if any, did shippers of that class of cargo obtain through the medium of the pool? A. They have been able to get their cargo sent forward; they have been able to do business, which before was very difficult. In China and Japan the cargoes are not shipped in very large quanti- 426
ties, hardly enough to form a cargo. They have not enough cargo to be able to charter outside vessels; they have to rely on the boats which are loaded locally, to carry forward this cargo, in parcels. That means that the cargoes are not large. They rely on the regular boats to carry the common cargo.

Q. Now the shipper with a parcel of poor cargo can get it off whenever a ship is going? A. He can.

Q. And if the particular ship carrying it sustains a loss through carrying that quantity of poor cargo at a poor rate he is remunerated proportionately through equalization of all the earnings? A. Yes. 427

Q. With the other ships which get the higher rate? A. Exactly, sir.

Q. Was there any difference at the out ports arising from sporadic competition that had been affected in any way by the institution of the pool? A. At the smaller out ports there would not be likely to be any difference to speak of; at the larger ports, Shanghai, Hong Kong and Singapore, there would be a tremendous difference.

Q. Explain that a little further? A. At all these ports, the large ports, there is a large quantity of cargo to go for- 428
ward. A lot of cargo which goes from the north is fine cargo, valuable cargo, and pays a good rate of freight. A lot of cargo from the south is common cargo, objectionable cargo, from a ship owner's point. It pays a low rate of freight. Every ship owner naturally wanted to carry all the finer cargo from the northern parts, like tea. He did not want to carry gambier, jelutong, oils, and other smelling cargo. He wanted to pick his cargo. The pooling stopped that. He had to carry, as far as the ship could safely carry, this objec tionable cargo.

429 Q. Do the individual ships loading at the regular ports, occasionally meet competition of outside vessels? A. That would only be at the regular ports where you would be likely to get any competition. At the smaller ports, no individual competition was likely to come in. The regular ports, large ports, like Shanghai and Hong Kong, the Straits, that is Singapore, would be able to furnish amongst the large shippers possibly, full cargoes, and there might be some difficulty there in regard to competition; not as a regular thing, simply from this,—what I might call sporadic.

430 Q. If a regular ship happened to be loading at a port where the cargo offered a very low rate, would you retain your regular ship until she got a load, or send her on with what she could get? A. Send her on with what we could get, and most likely reduce our rate to meet the rate that the competitor was making?

Q. Without the pool, whatever the loss would be sustained by an individual vessel, would fall upon her? A. It would fall upon a vessel which was loading against the outside.

Q. How was that worked out in the pool? A. There was no opposition, so therefore there was no necessity for work-
431 ing it out; only one steamer loaded, and no notice was taken of that, during the conference; since the commencement of the conference, one vessel only has been loaded directly in opposition.

MR. BALDWIN: What is that one?

THE WITNESS: The Crown of Castile from Manila, Cebu I think. I think I have the particulars—(referring to memorandum) from Manila, Cebu, to Singapore, in May, 1906.

Q. Has the pooling had any direct effect on the class of
432 vessels that you have been able to obtain under it? A. Under the conditions of the pools, the effect has been to improve the class of vessels, the size, the build, and the speed.

Q. Are there any allowances for speed? A. There are allowances for speed in the pool.

Q. How does that provision in the pool work out, as a practical matter, the provision which makes allowances for faster ships? A. I beg your pardon?

Q. How does that work out as a practical matter, the provision for allowances for faster ships; when are they called in, and what are they used for? A. The pooling allowances

which have been agreed to by all of the owners, have proved 483
to be quite satisfactory. There have been very few changes in the original arrangement made. It has been proved by all owners nowadays, and for some time past, as they increased their fleets, building better boats, faster boats, and better types of boats.

Q. That is, in the building of new boats, as I understand it, there is an inducement in the pool to provide faster vessels? A. That is so.

Q. And to get a reasonably large share of earnings? A. Yes, sir; that is so. The improvement in the vessels has resulted in the insurance companies granting lower rates of 484
premium on the cargo carried by these steamers.

Q. You mentioned that yesterday, and you mentioned the percentage; will you give us some idea what that amounts to, in dollars and cents? A. I am afraid I could not.

Q. On a cargo, say? A. If you take an ordinary rate of say one-half of one per cent., an ordinary rate on cargo, by the pooled vessels, by the conference vessels, an outsider would certainly have to pay three-quarters of one per cent. a cargo, up; an outsider would have to pay three-quarters of one per cent., and might have to pay up to one and one-half per cent. That has to go into the cost of the goods. A mer- 485
chant in shipping naturally insures. He wants to know what it is going to cost. He finds that the underwriters require a great deal more by the tramp, the outsider, than by the regular line, and he takes that into his calculations, whether he shall support the outsider or the regular lines.

Q. Is the amount of business done on such a margin that a difference of one-half or three-quarters of one per cent. insurance is a material factor? A. It is a most material factor. The business is done on a very narrow margin; that is my experience.

Q. In a rough way, what would be the value of an ordinary 486
China cargo on the fastest ships now used in the service? A. One hundred to one hundred and fifty thousand pounds.

Q. What is the highest and most valuable class of cargo? A. The silk goods come in the highest class.

Q. Silk and bristles? A. Bristles are very high.

Q. Teas? A. Tea is not very high; without getting a list, it would be difficult to say which are the most expensive. Tin, of course, is very valuable.

Q. Coming back again to the question of competition, what

437 was the special kind of competition, Mr. Dodwell, from the merchants' standpoint, in the beginning that was desired to avoid by the creation of this conference? A. It was the competition of the outsider, the steamer which made an occasional visit, may be once in a year; perhaps it did not come back for three or four years. It was the tramp class.

Q. The tramp competition? A. The tramp competition; it was not the competition amongst the regular lines; there the merchants could depend upon shipments; he could take care of himself with the regular lines.

438 Q. From the merchants' standpoint, is the competition of one regular line with another of importance apart from the rate problem? A. Yes; you will not find any big difference in the rate there; it would be a small matter among the regular lines; but the outsider coming in would accept or be prepared to accept something very much lower, to get home, to get back to a place where he could get a cargo.

Q. Would a conference established and carried on as this one has been, be able to avoid that outside competition? A. It would not be able to avoid anything in the shape of competition from a regular line. I think it has been definite-
439 ly proved,—which is my experience,—that if a regular line, a strong line is determined to come into any trade, whether it be a conference or not, that line will come in. That has been our experience, it is what I have seen in other conferences. You take the European conference; that is from China and Japan to Europe; the same thing applies. A strong line, a competitor would come in, or would be admitted. He may come in without fighting; generally speaking, he will fight his way. That competition is not eliminated by the formation of any conference that I have yet had anything to do with; and the only competition which the con-
440 ference has eliminated has been this—I used the term before —sporadic; that sporadic competition.

Q. That, I understand it, the merchants objected to, as well as the ship owners? A. Naturally so; they do not want to have their trade disorganized or demoralized.

Q. But a competition by a line which is established and can give assurance of an intention to serve the trade permanently and regularly, I suppose, would not be objectionable from a merchant's standpoint? A. Certainly not; they are welcome.

Q. And so would get support which would enable him to run, conference or no conference? A. Yes. 441

Q. And your primary object as merchants, in seeking the establishment of this conference in the beginning, was to do away with the tramp competition? A. That is so.

Q. That was because it injured you as merchants, rather than as ship owners? A. That was our reason.

Q. Since the conference has been established, and it has operated under rules that have been put in evidence, has there been any special change in trade conditions between China and this country? A. Between China, Japan and the Straits, distinctly so; especially in the Straits and the 442 Philippines.

Q. Explain what they are? A. Before the conference was established, merchants were in the habit of accumulating whole cargoes, and chartering the whole cargoes themselves, or in combination with other merchants. There was the element all the time of risk in the rate of freight. They often had to make their contracts for their produce without knowing what the laid down cost was going to be in the consuming country. That was a risk they had to take, and very often it was an unsatisfactory risk. The formation of the conference gradually changed the trade, and instead of full 443 cargoes, merchants were glad to be able to sell these bulky articles in parcels—what we call parcels, say of one thousand tons, or two thousand tons. It was much more convenient to them. They might want to ship, maybe one thousand tons a month for six months. They could make a contract with New York, with some consumer; they could make their contract with the steamship company, at a specified rate of freight. They knew exactly what the cargo would cost laid down in New York, and could name their price right out to the consumer, without having to add any margin for risk of 444 rate of freight. All that was obviated. They see themselves what an advantage it is to them to be able to sell that way, to avoid the risk of the freight rate, and they would welcome the coming of the conference. It has enabled them to do ever so much more business than before, on a more stable, a safer basis to themselves. On my visits abroad, and I have been out three times since the formation of the conference,—I make it a practice to go and see the shippers. I know most of them personally. I go to call on them, to find out what their ideas are, and whether there are any complaints.

445 From one and all, I find out on those visits no complaint against the conference; on the contrary, they have told me they would be sorry to go back to the old days.

MR. BALDWIN: All this is subject to my general objection; and I make the further objection that hearsay evidence of that kind is not competent in a suit at law or equity.

MR. KIRLIN: We do not agree with you at all about that.

MR. BALDWIN: I ask to have all the evidence stricken
446 out as to statements made to him by others. In addition to my general objection, I make the further objection that it is incompetent, irrelevant and immaterial.

Q. You may continue your answer, Mr. Dodwell, if you haven't completed it? A. I think I have completed it.

Q. You have stated that you went to see the merchants in the ordinary course of business? A. Yes.

Q. As one of the signatories to the conference? A. Yes.

Q. As one of the members of the Hong Kong committee?
447 A. Yes.

Q. And as agents in a large number of ports in which the ships were being operated? A. Yes.

Q. You consulted with the merchants about the service? A. Yes, sir.

Q. And what you have told us is what you learned in the course of such consultations? A. That is so.

Q. Will you tell us whether from the merchants' standpoint, the ability to contract ahead upon a stable basis of rate, on small parcels, enables the consumer on this side to get any better rate than he would get if he had to contract
448 ahead for entire cargoes, or accumulate them, or had to contract ahead for shipments upon competitive rates, the amount of which naturally would not be known until the time he came to make the shipments?

MR. BALDWIN: In addition to my general objection, I want to make the further objection that the witness has not shown himself qualified to speak about what the results would be to the consumer here; and on the further ground that it is purely speculative.

Q. You export to this country largely? A. We, as exporting merchants—

Q. To this country? A. Yes, to this country, to the United States, will be willing to do that business on a finer basis, if I have no risk in regard to the rate of freight. If I have to take a risk on the rate of freight, I am going to try to insure myself thoroughly. 449

Q. In the price? A. In the price, at which I shall offer those goods to the consumer in the United States. That goes without saying. Eliminate that risk, and I have not so much loss to meet; I have not the same possibility of loss that I had before. I have no need to add a margin on for freight.

Q. Can and do you make better rates to the consumers under stable conditions, than you do under unstable conditions? A. Most certainly. 450

Q. Mr. Dodwell, prior to the establishment of the conference, what measures were taken by ship owners to provide tonnage for regular service, such as could be maintained under the then existing conditions, to assure themselves of cargoes for their vessels? A. The usual course was for the ship owners and their agents to compete on the large ships, and try to get the merchants to promise to give them their shipments over a specified period; and naturally, in order to do that, offered them some inducement; it might be in the rate of freight; it was not always the rate of freight. It might be by secret rebate, commission, or whatever you like to call it. I know of a great many cases where the large shippers have been put on specially favored terms. 451

Q. Is it possible to operate regular steamship service in a long voyage trade, such as this, calling at a number of ports of loading, and one or more ports of discharge, without some method of obtaining assurance of cargoes in advance, either by means of contract, or by some such system as you have in use under your rebate circular? 452

MR. BALDWIN: In addition to my general objection that I have heretofore made, I object to that question as highly speculative; not having data here to support it.

THE WITNESS: In my opinion, it would be impossible to do so.

Q. Explain to us, please, the commercial reasons why it would not be possible?

458 MR. BALDWIN: I make the same objection.

A. The ship owners would not be likely to keep valuable steamers running regularly, unless they were assured of continued support. The uncertainty prevailing as to what their earnings were to be, would stop them from putting first class boats on.

Q. Is it an expensive service to operate? A. Every time you call at a port, to discharge or to load, you add to your expenses. If you load at one port and discharge at one port, you minimize your expenses. A regular line makes it one of
454 its features, to call at many points, and by discharging at several points. That means an additional expense in operating.

Q. What is approximately the length of the haul? A. The approximate length of haul, I think, is 13,000 miles. It may be a little more, depending on the ports at which you call.

MR. BALDWIN: You are speaking now of the Suez?

THE WITNESS: By the Suez; from Japan to New York by the Suez.

Q. The steaming charge must be a considerable item in a
455 voyage of that length? A. Naturally so; it must be very costly.

Q. Has it not practically been usual in all the long voyage trades in which you have been a shipper, for ship owners and shippers to contract in advance together in some way or other, either by long time contracts or through the medium of these rebate agreements? A. It has been; it was.

Q. Under the system that existed, as you said, before this service was inaugurated in China and Japan? A. Yes.

Q. Had you shipped under it to other countries? A. We
456 had, and we found it most unsatisfactory. We never knew what lines promised rebates; what rate of freight was being given to our competitors, or whether they were being given anything better than we were getting.

Q. You mean with no contract? A. No contract.

Q. As you now operate under your present system, is there any discrimination of any kind between different classes of shippers? A. None whatever.

Q. Or shippers of different quantities? A. None whatever, large or small, rich or poor; they are all treated alike.

Q. And are all the arrangements open and public? A. Most distinctly so.

Q. No secret agreement or privileges? A. None whatever; not one. 457

Q. Not of any kind? A. Not of any kind.

Q. What practical advantage is that state of things to the merchant? A. It enables him to do his business much more easily. It eliminates that element of risk.

Q. It enables him to know that he is on the same footing at least, with his competitors? A. He knows he is on the same footing as regards rate of freight with his competitors; and it is up to him to see that he can compete with the foreign merchant in regard to the purchase and in regard to the selling. 458

Q. Has the equality of opportunity which has thus been afforded to the merchant, had any appreciable effect in the development of the export business here or over sea?

MR. BALDWIN: I make the same objection, and on the further ground that it is speculative.

A. It has had this effect; it has increased the number of merchants enormously; where before you would find perhaps ten or a dozen people in the trade, you will find now forty or fifty; not all the same size certainly, but you find plenty of small people, some of them progressives. I could 459 name some firms that are quite important now, who when I left China in 1898, were not known.

Q. Could they have been known if the conditions that existed at that time continued? A. In my opinion, no; it was all in favor of the larger shippers.

Q. That is, the conditions of that kind in your judgment had a tendency to increase the business of the large merchants, to the detriment of the development of the smaller merchants? A. Most certainly; it discriminates against the smaller merchants.

Q. Upon what basis of comparison, if any, has the tariff 460 freight rates been maintained? A. Roughly speaking, it has been in the first place, as I said yesterday to Mr. Baldwin, the value of the cargo, the space occupied. As a further guide, if we have not full information, we might and probably do compare what the European conference is doing. We looked to see what they were asking, and then fixed our rates somewhat under them. Our rates have been uniformly below those to Europe, from China, Japan and the Straits.

461 Q. Throughout the period of this conference? A. Yes, throughout the period of this conference.

Q. There has been some increase quite noticeable on certain commodities in the course of the last year or two; what is the explanation of that? A. The increase in the value of tonnage owing to the world's demand for tonnage; that is, the increase in the general freight rates paid throughout the world. That is one thing. Also there has been extra cost of operating steamers; that extra cost is important, coals, labor, the cost of the vessels themselves; everything has increased.

462 Q. You have stated that the committees that have to do with the raising and lowering of rates are in the majority of cases controlled by merchants? A. They are composed of merchants.

Q. Composed of merchants? A. Yes.

Q. Have the merchants themselves recognized this general advance in tonnage, and voluntarily agreed to the increased rates correspondingly, on their commodities?

MR. BALDWIN: In addition to my general objection heretofore made, I object to this question as calling
463 for a conclusion or the state of mind of some other person than the witness himself.

MR. MONTGOMERY: And it is further objectionable because it does not appear whether he is talking about merchants generally or these committees.

(The question was repeated by the stenographer.)

A. They have.

Q. Is the increase that has taken place in the market value of tonnage attributable in any degree, in your opinion, to the existence of the conference? A. None whatever.

464 Q. What is that controlled and dominated by? A. The general shipping trade of the world; the tramp steamer, if you like to put it that way.

Q. By the great mass of tramp steamers? A. Yes.

Q. Prior to the establishment of the conference, when the service as you have stated was irregular, was there any considerable amount of trans-shipment business done to this country via Continent or England? A. A very considerable amount of cargo used to be sent via London, and was trans-shipped into the Atlantic steamers for New York.

Q. What happened to that business after the establishment of the conference? A. I believe it is dead. 465

Q. The direct shipments were promoted by the supply of cargo tonnage and the regular service, was it not? A. And the lower rate of freight.

Q. In your opinion, Mr. Dodwell, have the rates of freight that have been established and maintained by the conference throughout the period of its existence, been reasonable rates for the service performed?

MR. BALDWIN: In addition to the general objection that I have heretofore made to all this line of questioning, I make the further objection that the opinion of the witness as to whether the rates of freight are reasonable or unreasonable, is absolutely immaterial; that there is no data furnished of the cost of doing the business; and whether the rates of freight are reasonable or unreasonable is a question for the Court to determine. 466

A. I am of the opinion they have been reasonable.

Q. Can you give us any intimation of the extent of the returns that the rates charged have afforded to those engaged in the service? 467

MR. BALDWIN: I object to that because it necessarily must be hearsay.

A. On the contrary, I can give you some data; I can give you actual information, not hearsay.

MR. BALDWIN: It certainly must be hearsay from lines other than that which you represent.

A. We are shareholders in one of the companies running steamers regularly to and from New York, engaged in this service. 468

MR. BALDWIN: Which one?

THE WITNESS: Is it necessary to give the name?

MR. BALDWIN: Yes; I will ask it on re-direct examination, if you do not give it now. It might elucidate, if you state which one now.

A. The New York & Oriental Steamship Company. We have a fair amount of money in that company, and for the five years—

469 MR. BALDWIN: (Interrupting) If the witness is reading from any statement which he himself did not make up, from books, papers or vouchers which were of original entry, I object to his using it for any purpose.

THE WITNESS: The figures are taken from our own books in London.

MR. BALDWIN: You did not make the entries, did you, Mr. Dodwell?

THE WITNESS: I saw the books, Mr. Baldwin.

470 MR. BALDWIN: But you did not make the entries, did you?

THE WITNESS: No, I am not the bookkeeper, sir; I did not write the figures.

MR. BALDWIN: And in addition to that you did not have in your possession at the time the books were made up, the original data from which the books were made up, did you?

THE WITNESS: Probably not, sir.

Q. You got the dividends, of course? A. I got the dividends. I know what it was. I know what we received.

471 Q. Let us know what it was?

MR. BALDWIN: That is all immaterial; I object to it.

A. For six years the dividends amount to 3 1/6 per cent. per annum.

MR. MONTGOMERY: I do not think he has named the years yet, Mr. Kirlin.

THE WITNESS: From 1902 to 1907, inclusive.

472 Q. Are there any other actual figures that you have knowledge of? A. We have an interest in two of the John Warrack & Company's steamers; the Erroll and the Montrose.

MR. BALDWIN: In this conference?

MR. KIRLIN: Yes.

THE WITNESS: They have been frequently engaged in this conference.

MR. BALDWIN: Are they in this conference now?

THE WITNESS: They are; the return during those six years to us is 8⅔ per cent. per annum; no depreciation provided.

Q. What is the ordinary percentage of depreciation? A. 6 per cent. 478

Q. So that the net return was less than 3 per cent.? A. Yes.

Q. Counting depreciation? A. Yes.

Q. Can you give us any comparison of the rates that have been charged under the conference with the tonnage rates of the world during the same period?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial; on the further ground that it cannot be the best evidence in any event, and asks for a direct conclusion which the Court can draw from the facts, if properly admitted. 474

MR. SPOONER: He asked if he could; if he cannot do that, that is the end of it.

MR. KIRLIN: We are not proving the whole case by one witness, but we propose to prove it step by step.

MR. BALDWIN: This is not at all pertinent to any question I asked, and you are making him your own witness.

MR. SPOONER: We are not limited to your questions. 475

MR. BALDWIN: You are to a certain point, and then he becomes your own witness under the rule.

A. I have here a statement headed "Average rates of freight," after deducting deferred rebates arranged by the New York Westward Conference steamers, taken from the official pooling returns.

MR. MONTGOMERY: What years?

THE WITNESS: From 1905; the commencing of the pooling, to 1911, inclusive.

Q. What does that statement show, net figures? 476

By Mr. Baldwin.

Q. Mr. Dodwell, did you keep the pooling returns yourself, of the conference? A. No, sir.

Q. The statement that you have made up, concerning which you are now about to testify—was it made up by you yourself upon the returns? A. It was made up by Mr. Dermer.

Q. Was it made up by you? A. No, sir; I haven't said it was.

477 Q. I am asking you if it was? A. No, it was made up by Mr. Dermer; it was not made up by me.

Q. Some person that you requested to make it up? A. Yes.

Q. So fas as you personally know, you know nothing about the accuracy of the figures; you just rely on the statement that he gave you; is that right? A. That is quite right.

Q. You had no access, nor were you in any manner privy to the entries from which they were made? A. That is quite right.

478 MR. BALDWIN: I submit that he cannot make any statement whatever as to what that statement contains; it is not the best evidence; it is hearsay.

By Mr. Kirlin.

Q. Mr. Dermer was one of your partners? A. Yes.

Q. And Dodwell & Company are secretaries of the London Conference? A. That is right.

Q. All the data and details for the workings of the conference, and all the figures, come before your firm as secretaries, do they not? A. They all are sent to us as secretaries.

479 Q. And this statement is made up by Mr. Dermer, a member of your firm, from the information which your firm has? A. Yes.

MR. BALDWIN: Is he going to refresh his memory from it, or read it?

MR. KIRLIN: I want to find out what it is first.

Q. What is it; what does it show? A. It shows the average earnings per ton, per unit, for each year, on the bale space; also the average earnings, calculated on the dead weight, for these years.

480 Q. It shows what they amount to? A. It shows what they amount to; what the gross tonnage carried was; the number of steamers loaded; their dead weight cargo capacity, the net freight earned by the number of steamers, given in column 6 previously referred to; the net freight per ton dead weight of cargo; the number of steamers which paid into the pool; the number of steamers that received from the pool.

Q. In explanation of the last two columns, is it the fact that on the first collections of freights, each owner's freights were taken possession of by themselves? A. That is so.

Q. And for the purpose of pooling, each owner renders to the pool manager a statement of the freights that he has received? A. That is so. 480

Q. And if it is found that he has received more than his proportional share, he pays into the pool? A. Yes.

Q. And if he has received less, he receives from the pool? A. Yes.

Q. Your last two columns show the number of steamers that have paid into the pool on acount of having received too much? A. Yes.

Q. And that have received from the pool on account of having received too little? A. That is so, yes. 482

MR. BURLINGHAM: You do not object because Mr. Dermer has not been called; you object to its relevancy and materiality, but you do not object because we have not first called Mr. Dermer?

MR. BALDWIN: I first object to its competency. You cannot expect me to consent to somebody making up a tabulation from some source without my having any access to it.

MR. BURLINGHAM: It is probably very valuable to you, to see how the pool operates. 483

MR. BALDWIN: My objection is to its competency, because I am entitled to a cross examination of the sources for the purposes of accuracy. He did not make the entries; the statement is made up by the conference, of which his firm is only a part. How can he vouch for the accuracy?

MR. BURLINGHAM: You can get it from him on cross examination.

MR. BALDWIN: I have no access to the accuracy of it. It may possibly be accurate. I am not prepared to say at this moment how far I may withdraw 484 this objection.

MR. KIRLIN: I can offer it for identication.

MR. BALDWIN: If you are going to offer it at all, I want an opportunity to thoroughly exhaust Mr. Dodwell on cross examination, to show that he cannot possibly have primal knowledge of any of it.

MR. BURLINGHAM: You would at least like to have a look at it?

MR. BALDWIN: Yes; if I am satisfied that the

485 sources are all right, and I have an opportunity to go into it, to know how it works out, I may withdraw my objection to its competency. As it stands now, I certainly cannot consent to it.

THE WITNESS: When I was preparing to come over here, I asked Mr. Dermer as the most competent man, to make up this statement for me; my desire being to ascertain what the steamers had earned under this conference. To make this up, required probably a fortnight's hard work on the part of Mr. Dermer and one or more assistants, in our London office.

486 Q. It involved the examination of a very large mass of documents and book entries, of course? A. Most certainly.

MR. KIRLIN: Subject to further proof of this document if required, we will go on and examine about it with Mr. Dodwell, and mark it.

MR. BALDWIN: Are you going to offer it?

MR. KIRLIN: Not the figures, but what these things mean.

By Mr. Kirlin.

487 Q. In the first column of the statement, Mr. Dodwell, the heading appears, "Pool No.?" A. Pool No. 1.

Q. And it is followed by different years? A. Yes.

Q. What does that mean? A. That the Pool No. 1 virtually covered the year 1905.

Q. That is the pooling of the operations for that year? A. Yes.

Q. Pool No. 2? A. In the same way, for 1906.

Q. And pool No. 3? A. No. 3 was for 1907; No. 4 was for 1908; No. 5 was for 1909; No. 6 was for 1910, and No. 7 was for 1911.

488 Q. Then you give the total number of the steamers which sailed each year? A. Yes.

Q. What is meant by "units?" A. The units as referred to in the pooling rules are our tons of bale space of the steamer, which is their capacity; the bale space.

Q. The third column is the correct amount of bale space for the 34 ships that sailed in that year? A. Yes; the bale space is the 40 cubic feet occupied in the steamer's hold, in obtaining the measurements of the steamer; there

are various methods adopted; bale space is one of the acknowledged and best known. 489

Q. And that is the basis of the unit? A. That is the basis of the unit.

Q. Of the pool? A. Yes, of the pool.

Q. And the "net freight" column represents the amount that all those steamers earn? A. Yes.

MR. BALDWIN: In dollars, cents or pounds?

THE WITNESS: In pounds sterling.

MR. MONTGOMERY: In other words, you take pool No. 1 showing a total of 34 steamers, units 313,300, the net freight earned is 291,800 pounds for the year? 490

THE WITNESS: Yes.

Q. Then you show in the statement the average rate that that amount earned, on the freight per unit, of 40 cubic feet bale space in the ship? A. Yes; that would be dividing that by that (indicating).

Q. That is, dividing that freight by units? A. Yes.

MR. BALDWIN: On the other hand, you divide the returns by the units?

THE WITNESS: Yes, that is right. 491

Q. Whatever appears there is the average rate for that year? A. Yes.

Q. Of net earnings? A. Yes.

Q. Then further on in the statement, you have computed the same thing on the basis of the dead weight capacity of the ship? A. Where it was possible. In some of these years a few steamers had been omitted, and their earnings deducted, as their dead weight capacity is not recorded. The result is not appreciably altered; the reason being that we had the figures for the dead weight, and could therefore compare the dead weight of 28 out of 34. 492

Q. On the 1905 pool, had you the figures of 28 out of 34 ships in that record? A. Yes.

MR. BURLINGHAM: He gives the dead weight capacity of 28 steamers out of 34.

Q. Then you have shown what the net freight per dead weight ton of cargo was on those 28 steamers? A. Yes; the number of steamers that paid into the pool was 16; the number of steamers that received from the pool was 18, making 34, the total number of steamers loaded.

493 MR. KIRLIN: I offer this statement in evidence, subject to verification of the figures by other witnesses, if required.

MR. BALDWIN: I object to it as incompetent, irrelevant and immaterial, and in addition to that, I think probably it is included under the head of incompetency, that the sources of the information which this purports to tabulate would be the best evidence, that the witness himself did not make it up, and therefore its accuracy cannot be established for any purpose whatsoever.

494 Marked Defendants' Exhibit 1.

Q. Mr. Dodwell, assuming that these figures shown on this statement, Defendants' Exhibit 1, represent the correct amount of the earnings of the pool steamers for the years 1905 to 1911, inclusive, how do they compare with the freight rates for tonnage for a dead weight ton during the same period.

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial.

495 A. They compare very reasonably with the market rates for tramp tonnage during that period.

MR. BALDWIN: I move to strike that out on the ground that there is no proof of what the tramp tonnage was.

Q. Give us as near as you can what the rates for tramp tonnage were in the trades that would most nearly compare with this trade, China and Japan trade and New York?

MR. BALDWIN: I make the same objection.

496 A. The nearest trade for comparison would be with Java in the United States sugar trade.

Q. That is a somewhat shorter haul, is it not? A. Very much shorter, 3,000 miles shorter than our haul.

Q. Is that a steady trade, a regular trade? A. A regular trade.

Q. Vessels constantly employed? A. During the sugar season, but it does not last the whole year.

Q. I mean every year? A. Every year there is sugar sent in large quantities.

Q. Is there any other regular trade from the Far East with which you can make this comparison, make the comparison so closely as the Java trade? A. No, sir; no other. 497

Q. Give us to the best of your information what the comparison with the Java trade for those years would show?

MR. BALDWIN: In addition to my general objection, that is objected to on the ground that the conditions under which the Java trade is carried on, the cost of doing business and the conditions under which it was done, are not in evidence, and upon the further ground that the witness has not shown that he has any first hand knowledge of what the rates in the Java trade were. 498

MR. KIRLIN: If he has not, we will reinforce that.

A. The Java trade is carried on by tramp steamers, which are chartered in the open markets of London, New York, and wherever it may be.

Q. On what basis? A. Full cargoes, one or two ports of loading, one or two ports of discharge.

Q. On the basis of dead weight per ton? A. On the basis of dead weight per ton.

Q. One of the columns in your statement, Defendants' Exhibit 1, shows the average earnings of the pool steamers? A. That is so. 499

Q. Upon that same basis? A. Upon that same basis.

Q. How do the two compare on that basis?

MR. BALDWIN: I make the same objection.

A. In 1905 our earnings 25 and 8 pence per ton, as against 25 shillings for 1905 for the Java steamers, for that dead weight.

Q. In 1906? A. Our rate 28 and 5 pence against 22 and 6 pence. 500

Q. 1907? A. 29 and 7 pence.

Q. Your rate? A. Our rate, against 26 and 3 pence.

Q. 1908? A. 29 and 8 pence against 26 and 3 pence; 1909, 30 shillings and 3 pence against 27 and 6 pence; 1910, 30 shillings and 10 pence against 26 shillings and 3 pence; 1911, 32 shillings and a penny against 30 shillings.

Q. These Java rates are susceptible of verification in any freight market in New York, I suppose? A. Yes.

Q. Is the difference between the amounts earned by your

501 steamers, charged to your steamers and charged by the Java steamers, in your judgment any more than sufficient for the added distance that your steamers have to travel, and the conditions of the trade, if there are any?

MR. BALDWIN: I object to that as making the conclusion of the witness, and as incompetent, irrelevant and immaterial.

A. In my opinion the pool rates are lower than the market rates, when you take into consideration the extra voyage and the extra expense that we are put to, with the number
502 of ports of call.

Q. Are there more ports of call in your trade than there are in the Java trade?

MR. BALDWIN: The same objection.

A. A great many.

Q. And a better class of steamers? A. Our steamers are much better than the tramp steamers carrying the sugar cargo from Java.

Q. And by extra voyage you mean the extra steaming, I suppose? A. The distance we have to go; commencing our
503 voyages in China or Japan, all of them a much further distance from New York than Java.

Q. Do you have any more ports of discharge than the Java cargoes? A. We have two certain ports of discharge, the Java steamers one, sometimes there may be two.

Q. Is there any difference in the time of loading that would enter into that comparison? A. Distinctly so, it takes us much longer to load at all these different ports than if you load a bulk cargo like sugar.

Q. Do you know whether the expense of the loading ports
504 in China compares with the expense of the loading in Java?

MR. BALDWIN: The same objection.

A. They are much heavier.

Q. In China? A. Yes, sir.

Q. Is there any difference in the discharging expenses in the two trades? A. I am not competent to say. We have in addition to run the risk of getting a full cargo, the tramp steamer is guaranteed a full cargo against his dead weight.

Q. By his charter? A. By his charter.

Q. Have you had any experience in the conference by which you could compare the charters for the vessels for the service with the earnings that chartered ships made in the service? 505

MR. BALDWIN: He has testified that was eliminated after the conference.

A. We have means of comparison.

Q. What are they? A. We are called upon at times to provide more tonnage than we have of our own at the moment. At those times we have to go into the open market and charter. 506

Q. Charter ships for the service? A. Charter tramps for the service. We have chartered.

Q. In what years? A. In 1905 we chartered seven steamers; five, I think, showed a profit; two of them showed a loss. There was a loss on the seven charters of 209 pounds, to the pool.

Q. An aggregate loss on the whole seven?

MR. BALDWIN: This is all subject to my general objection.

A. An aggregate loss on the whole seven. 507

Q. Those ships which you chartered at the market rates you put into the conference service and they carried freight for the general shippers at the conference rates? A. Yes.

Q. And in stating this loss you are now comparing the freights that those vessels earned? A. Yes, sir.

Q. At the conference rates, that is, what the conference had to pay for the charter of those ships? A. That is so.

Q. And on those seven chartered in that year there was a net loss of 209 pounds? A. That is so.

Q. When did you charter next after that? A. The next year, 1906, there were five chartered. 508

Q. What was the result of those charters? A. A profit of 2,800 pounds.

Q. On five ships? A. On five ships.

Q. What sized ships were they? A. My recollection of them would be fairly big boats, 7,000 or 8,000 tons dead weight.

Q. So there you made a small profit on the ships? A. I made a profit of 2,800 pounds.

509 Q. How much did that average per ship? A. In that case it would come to 560 pounds a ship.

Q. What was your next period of charter? A. The next year there were nine steamers chartered, seven showed a profit, two showed a loss.

Q. The net profit was 2,500 pounds? A. Yes, sir, the profit was 2,500 pounds.

Q. Is that on the whole nine? A. Yes, sir, on the whole nine, the net profit was that on those steamers, 21 steamers chartered in those three years, there was a profit of 5,100 pounds; that averages 243 pounds per steamer. You may
510 take the gross earnings on the steamers at ten to twelve thousand pounds—2 per cent.

Q. Are there any other charters subsequent to those you have mentioned? A. I have no particulars as to the later ones, we have no later figures. Before I left we had to take up a steamer to fill an unexpected demand. Our estimated loss on that steamer was 3,000 pounds.

Q. Mr. Dodwell, haven't you made a mistake in the dates of the different charters, haven't you confused the number with the year? A. That is so, I find it is so.

511 Q. The actual years were what? A. 1909, seven steamers; 1910, five steamers; 1911, nine steamers. I gave you the number of the pool instead of the year, that is it. The 1912 figures are not yet made up.

Q. Mr. Dodwell, you have given a short account of the circumstances under which the only private arrangement made with shippers was concluded under the Singapore agreement? A. Yes, sir.

Q. What were the circumstances that led the conference to enter into that agreement with the Singapore shippers, why was it necessary to have their concurrence?

512 MR. BALDWIN: You mean the three?

MR. KIRLIN: The people with whom the 5 per cent. agreement was.

A. These firms were a disturbing element.

Q. Had they any cargoes that you needed? A. They had cargoes which we required if we were to give a regular freight service.

Q. Was there anything in the quality of the cargo that they had that made that agreement necessary? A. There was; their cargo was mainly dead weight cargo, whereas the

cargo which we were getting from China and the North was 513
mainly measurement cargo, light cargo; for the purposes of good stowage we wanted heavy cargo.

Q. That is for the economical loading of the ship? A. For the economical loading of the ship, and good earnings, in order to make good earnings.

Q. Without the heavyweight cargo which Singapore alone ould provide, would it have been practicable to make as avorable rates on the Chinese and Japanese cargoes if you got the weights from Singapore?

MR. BALDWIN: I make the same objection.

514

A. If we got the weights from Singapore we could certainly make better rates up north than China and Japan.

Q. Was it possible to get the concurrence of the Singapore merchants upon any other footing?

MR. BALDWIN: I make the same objection.

A. We found it impossible; we tried in every direction.

Q. Did you make efforts to get away from that agreement? A. We did.

Q. When? A. Before it was finally fixed, sometime before it was finally fixed joint efforts were made by the European 515
conference and the New York conference to induce these big shippers to forego this agreement that they had, to cancel it, and they refused.

Q. This agreement was not signed for the purpose of favoring these shippers?

MR. BALDWIN: That is purely argumentative and I object to it.

A. This agreement was signed for the purpose of getting these shippers to come in line with us, to give us cargo we needed, in order to give frequent service in order that we 516
should have control of a large quantity of cargo which would give us frequent sailings, and enable us to fill up.

Q. During the occurrency of this agreement, were efforts made? A. There were.

Q. Real efforts? A. Real efforts; it was recognized it was not a nice thing, and we did not like it; we felt it was the only thing, so far as the conference was concerned, that anybody could throw stones at us for.

Q. And you got rid of it as soon as you could? A. We did.

517 Q. Since its abrogation, all shippers from one end to the other of the list of ports that the conference serves stand upon the same basis of absolute community? A. That is so.

Q. In freight rates? A. That is so.

Q. I understand you, apart from the service of Houlders and the Manchurian Line, which were admitted to the conference after its original formation, you have not had any regular line competition? A. We have not.

Q. Is there any other competition which existed before and has continued to exist since? A. Very distinct, yes; the Trans-Pacific.

518 Q. The Trans-Pacific? A. The Trans-Pacific.

Q. Over what area of the territory that the conference serves do the operations of the Pacific Lines extend? A. The Philippines, Hong Kong, the China ports and Japanese ports, directly as ports of call, indirectly Singapore and the Straits, by trans-shipment.

Q. So that throughout the whole time you have had the competition of the Trans-Pacific Lines? A. We have.

Q. How much shorter is their service in the matter of haul? A. Their ocean service from Hong Kong to say San Francisco is 6,000 miles, the railway service right across is
519 another 3,000 miles—I am giving round figures—9,000 against our 13,000 miles.

Q. How many lines of steamers have been operating on the Pacific during the existence of the conference, across the Pacific? A. The Canadian Pacific Railway Company steamships; Nippon Yusen Kaisha; Osaka Shosen Kaisha; Toyo Kisen Kaisha; the Blue Funnel Line; the Bank Line; the Pacific Mail Steamship Company; the Portland & Asiatic Steamship Co. I think that covers all.

Q. Is there an opportunity by means of those lines for
520 shippers in the area in which the conference operates to make shipments regularly throughout the year by the Trans-Pacific routes? A. There are very frequent sailings, very frequent. There are something like fifteen sailings a month.

Q. Fifteen sailings a month? A. Yes, sir.

Q. Have you included in the list of Trans-Pacific service the Standard Oil steamers? A. No, sir.

Q. Don't they operate chartered steamers on the Pacific? A. Not that I am aware of.

Q. Their own boats? A. No, sir, not that I am aware of.

Q. You say the Trans-Pacific Lines have about fifteen sailings a month? A. Yes, sir.

Q. And how many sailings do you have in the conference? 521
A. About five, five to six.

Q. You say there is no agreement between you, that is, between the Trans-Pacific Lines and your Lines as to rates. How do the rates actually compare? A. Their rates are higher than ours.

Q. What is the result on the movement of the Chinese and Japanese and Philippine products of that difference in rates; do certain classes of merchandise move one way rather than another? A. The better class of cargo moves by way of the Pacific; the lower class cargo moves by the Suez.

Q. Notwithstanding the difference in rates, the higher 522
rates, the better classes of goods move in a larger volume by the Trans-Pacific Lines, do they? A. They do, because there is a lower rate of insurance in the first place; the voyage is shorter, the time occupied is shorter.

Q. You have said that tea moves in a larger proportion by the Trans-Pacific Lines. How about silks? A. The silk is entirely taken by the Trans-Pacific Lines, the raw silk.

Q. Is that a very large product? A. Very large.

Q. Handled in that trade? A. Very large.

Q. What other products move largely by the Trans-Pacific
Lines? A. Better qualities of straw braid go forward large- 523
ly by the Pacific Lines; matting is largely carried by the Pacific Lines; tea I have already mentioned. The railway companies are able to grant what we call distributing facilities for tea. A shipper may send forward a shipment of tea more than a carload to a distributing center like Omaha, the Minnesota Transfer, Fort William, and he gets the benefit of the carload rate right up to that point, and he could distribute in less than carload by paying the difference on what he sends forward to any points near by. Therefore, it is a distinct advantage to the tea, to the tea receiver, to have
it shipped by the Trans-Pacific. 524

Q. Do the teas coming by the Atlantic Seaboard and transshipped here get those privileges? A. They do not.

Q. For distributing purposes? A. They do not.

Q. Are any of the steamers operating in the conference lines subsidized by their own governments? A. None of them.

Q. I believe you said that notwithstanding the conditions in the rebate circular, that the rebates were only payable on the condition of continuous support, and that you would

525 never actually enforce that clause against an occasional shipper who had made an outside shipment? A. We did not enforce it in the case of the Crown Castile, we never have enforced it.

Q. Has the conference ever refused to carry a cargo for a shipper that has treated with the opposition? A. Never.

Q. What has the policy of the conference been with reference to its relation to the shippers?

MR. BALDWIN: I object to that as immaterial.

A. The most friendly. We look upon the interests as their
526 interests; they look upon their interests as being mutual.

Q. Are they mutual actually? A. They are actually mutual; they have got to depend upon one another.

Q. You spoke of sailing your vessels as per schedule even though not full. Can you give us any idea as to the extent by which you dispatch vessels with unfilled spaces? A. I have the figures made up by myself for two years.

Q. What years are those? A. 1906 and 1907.

Q. During those years what did they amount to? A. 9,564, tons shortage.

Q. That is practically the tonnage of a whole ship, isn't
527 it? A. Practically one ship's load.

MR. MONTGOMERY: That is in 1906?

THE WITNESS: 1906 and 1907.

MR. MONTGOMERY: You mean the two years?

THE WITNESS: The two years, yes, sir.

Recess.

Q. Mr. Dodwell, you have not been able to produce copies of all the different sorts of rebate circulars that have been issued. Do you wish it to be understood as to those of which
528 copies are not produced that the provisions were essentially the same as in the copies that have been produced? A. They were essentially the same. If it is of importance, I will be glad to endeavor to get copies of them, of each one.

Q. I do not know that it is, but if our friends want them we will get them.

MR. BALDWIN: I suppose the general conditions were the same, but the terms were different?

THE WITNESS: Yes, sir, the rebate is always the same.

MR. BALDWIN: Then it would be essentially the same, wouldn't it? 529

THE WITNESS: It would be essentially the same, the rebate is essentially the same.

Q. It has always been at the same rate, the rebate, the same per cent? A. The same per cent.

Q. Has it always been the practice that the rebate has been paid to the shipper? A. To the shipper only.

Q. And to be applied for and paid at the port of shipment or in England? A. At the port of shipment, or in England, as regards the Philippines.

Q. As to the Philippines you never issued any circulars 530 there at all, I understand? A. Never at all.

Q. And have never paid any rebates there? A. No, sir, never.

Q. And have never allowed any application to be filed there? A. None whatever.

Q. That has been exclusively an English transaction? A. Exclusively so.

Q. Objection has been made to these rebates upon the ground, upon a number of grounds, for example, that the scheme amounts to holding up a part of the shipper's money 531 or held as a forfeit, or that the ship owners make use of the shipper's money for a certain time after it perhaps ought to have been paid to him. What is your view as to that?

MR. BALDWIN: This is all subject to my objection.

A. I look upon it as the ship owner's money, always has been; the ship owners began by offering to give something which the shippers never contemplated when they made their shipments, they gave them three months rebate covering three months prior shipments. All through I look upon the rebates as the ship owner's money, not the shipper's money. 532

Q. Until paid? A. Until they paid it.

Q. Until applied for, at least? A. Applied for until the agreement is complete.

Q. Until the agreement is completed, the shipper has not acquired any right or title to that money?

MR. BALDWIN: That is a question of law and I do not think he can answer that.

A. I think the shipper is not entitled to it until he completes his contract by filling up the form.

582 Q. You are speaking as a shipper, are you? A. I am speaking as a shipper and a shipper's agent, both.

Q. Mr. Dodwell, this is a proceeding, as you know, to obtain a dissolution of all your conference arrangements and the doing away with your rebate system and the pooling in the trade, and of course if the Court feels bound to support the prayer of the petition the conference arrangement as now existing, with the rebate and pooling, will not only be stopped presently, but will be prohibited in the future? A. Yes, sir.

Q. Won't you tell us what in your judgment, as a mer-
534 chant, the effect of the cancellation of all the existing arrangements would be upon the trade?

MR. BALDWIN: I object to that upon the ground that it is incompetent, immaterial and irrelevant, and on the further ground that his opinion is not of any consequence here whatsoever, and is speculative and asking for conditions that may or may not obtain.

A. I should exceedingly regret if the law were to be read as making it necessary to disband and break up the present
535 arrangement. We would have to set to work on the old lines, for a time there would be chaos, demoralization, both for ship owners and for merchants, unsettled rates; there would be a getting together unquestionably of the big interests, the rich people, ship owners and the merchants, get together, make their own contracts, getting advantageous terms, to the disadvantage of the poorer competitors. The trade would get into the hands more and more of the big men. When I say the trade, I mean the shipping, the ship owning trade as well as the merchant trade, bound to do so, and I do not see that that is going to benefit the consumer
536 in any way. I feel that as long as there is a community of interests which exists in this conference you cannot better it. There is no secrecy of any sort.

Q. You mean you could not better it from the standpoint of the public interests? A. From the standpoint of the public interests, the increase of trade, the development of trade.

Q. What effect would it have on the regularity of sailings, in your judgment?

MR. BALDWIN: I make the same objection.

A. It would be impossible unless you had continuity of cargo, continuity of support, it would be impossible to have regular sailings. 537

Q. What effect would it have, in your judgment, upon the supply of tonnage in trade?

MR. BALDWIN: The same objection.

A. The weaker ship owner would be driven out, bound to.

Q. What effect would it have from the merchant's standpoint on the rates at which he could sell for export to this country?

538

MR. BALDWIN: The same objection.

A. You would have a greater monopoly than you ever had before; it would get more and more into the hands of the rich people and well-to-do merchants.

Q. Would the price of produce in the Far East, laid down in this country, be affected in your judgment by such a change.

MR. BALDWIN: I make the same objection.

A. I do not think so; for a time, yes, possibly, but later certainly not. 539

Q. That is, while the rates were low, the fighting rates were low, the prices would be temporarily lower? A. That is so.

Q. Eventually it would go back and the rates would be higher? A. Trade would go into fewer hands and the rates would be higher.

Q. What would be the effect of it on the service of the ports in the Far East?

MR. BALDWIN: The same objection.

540

A. The tendency would be to fall off, owners would go to the ports where they had the fewest expenses.

Q. In the case of such a change, any resolute owner with unlimited backing, resolving to stay in the trade at whatever the cost of competition, what would be the result of that? A. I do not get the question.

Q. If any owner of large capital, large facilities, and adequate number of ships, resolved to stay in the trade and fight everybody, what would be the result? A. He would stop and the others would go.

541 Q. That is, it would eventually fall into the hands of a stronger man? A. I would look at it, it would go into the hands of one or two and they would run the whole thing.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Dodwell, the export trade from China and the Oriental ports is a very old one, is it not? A. The export trade?

Q. Yes? A. A little over fifty years.

Q. It has been an established trade for fifty years, has it not? A. Yes, sir.

542 Q. In that period of fifty years there have been a great number of carriers engaged in it? A. There have been.

Q. And, like in the case of other business, some succeed and some do not, some stay and some drop out? A. That is so.

Q. It is no more characteristic of the Oriental carrying trade than any other, is it? A. No, sir, the same as ours.

Q. It has always been the export trade, it has always been, comparatively speaking, in the hands of a small number of merchants, has it not? A. It has.

543 Q. And that condition is practically the same now? A. It is.

In other words, the various commodities which form the subject-matter of freight in these Oriental ports that you have described, both to the continent and to this country, regardless of the number of commodities, has been concentrated in the hands of comparatively few merchants? A. Until recently.

Q. Until what time? A. Say the last ten years.

Q. Originally the carrying was done in sailing vessels, was it not? A. In sailing vessels.

544 Q. And as long as the sailing was the motive power the merchants were very frequently the owners of the vessels? A. That is so.

Q. And that continued to be so until the advent of steam, practically? A. I would not like to say that; applying to American ship owners, not to British ship owners.

Q. Applying to American? A. Yes, sir, applying to American.

Q. So that prior to the advent of steam, these China houses or China merchants dealing with American were not only the merchants, but they were the owners of the vessels? A. No, I do not agree with you about that.

Q. To a very large extent at least? A. The merchants who were shipping from China were not the owners of the vessels, it was the importers in America. 545

Q. That owned the vessels? A. The importers, they were the owners of the vessels.

Q. And they were comparatively few? A. Very few.

Q. And the merchants who sold their commodities to the merchants here who owned the vessels, they were comparatively few? A. Comparatively few.

Q. As soon as steam supplanted sailing vessels in this trade, then there came the establishment of what you call regular lines? A. Yes, sir, that is so. 546

Q. Or very shortly afterwards? A. Yes, more or less regular.

Q. More or less regular? A. Yes, sir, more or less regular.

Q. But with the advent of established lines using steam as a motive power, there were certain regular lines that became more prominent than the others? A. That is so.

Q. Because of their facilities or the amount of capital, or for various business reasons, they became more prominent, and they carried the bulk of the trade? A. Yes, sir.

Q. And then with the advent of steam and after regular lines were established, then came the tramp steamers? A. Yes, sir. 547

Q. I take it that tramp steamers have no home, they go anywhere where they can find the requisite trade for their business? A. That is so.

Q. Where the owners think they can do the best? A. That is so.

Q. As soon as what you call the regular lines were established, it became—I will not say soon—as a rule the representatives of those regular lines in the Orient, that is to say, their agents, were usually the merchants, weren't they? A. Frequently so. 548

Q. Very frequently? A. Yes, sir.

Q. And therefore they had held a dual relation, they had the relation of a shipper when they shipped on those lines, and they had the relation of an agent when they represented the line in the shipment? A. That is right.

Q. You had two incentives, we will say, as the merchant to get the rate as reasonably and favorable to you as you could? A. Yes.

549 Q. And at the same time you wanted the rate to be at such a figure that your commission would be as high as possible? A. I would not put it that way, that it would be satisfactory to the owner.

Q. You do not mean to say you have an altruistic interest in the matter, that your compensation as an agent made no difference to you? A. If you are not getting good rates of freight you won't get the agency and you won't have any agency at all. You have two principals, the merchant and the owner, you are a go-between.

Q. As a merchant it is to your interest to get as low a
550 rate as possible? A. It is.

Q. And as an owner it is to your interest to get as high a rate as possible? A. Yes, sir, consistent with not killing the trade, of course.

Q. Then the only thing that affects your operation is that the rate that you finally obtain will be a rate that you can do business at? A. Exactly.

Q. If, therefore, you could make an arrangement by which competing owners should unite and establish a rate and give preferential discounts, called rebates, the effect would be, would it not, that the shipper would be bound to the owner
551 by the amount to a certain extent by the interest he would have in the rebates, wouldn't he? A. You speak of them as preferential rebates.

Q. Haven't you already testified you make these agreements with shippers when they agree with the conference lines? A. We offer these rates to everybody.

Q. If they will confine all their shipments to that? A. Is that preferential?

Q. We will not argue that. You make the proposition to the shippers, that is to say, you make it to every shipper?
552 A. I do.

Q. If he will confine all of his shipments to the conference lines then and then only is he entitled to a rebate, is not that right? A. Yes, if he sees it to his interest, whatever the wording is.

Q. A man does not do things not to his interest, that is common sense, isn't it? A. We will take it for granted it is for his interest.

Q. And therefore, if the inducement offered for the rebate is accepted, it must be accepted entirely on his confining all his shipments to these conference lines? A. That is so.

Q. You say that your business as a shipper or a merchant is greater than that of your business of steamship agent? A. That is so. 553

Q. Do you ship over the Trans-Pacific Lines? A. Certainly.

Q. And you ship over the Suez Lines? A. Certainly.

Q. Or the conference lines? A. Certainly.

Q. What class of commodities do you ship over the Trans-Pacific Lines? A. Tea, silk, all the valuable cargoes.

Q. What class of commodities do you ship over the Suez Lines or the conference lines? A. Wool, feathers, gallnuts, ginger, straw braid, rush hats, bamboos. You want me to give all of them? 554

Q. That is enough. That which you ship over the Suez Lines is what we call a lower class of commodities than what you ship over the Trans-Pacific Lines? A. That is so.

The condition of the consuming trade here, as I understand your testimony, requiring high grade commodities to go by the quicker routes? A. That is so.

Q. And in arranging for the carrying rates you have to take into consideration the rail rates from the Pacific ports to the point of destination in the United States, don't you? A. The through rate is always arranged. 555

Q. And when you spoke sometime ago of the rates through the Suez being lower than the rates through the American continent by way of the Trans-Pacific, isn't it a fact that the reason, if there is any higher rate on high class goods and by the Suez Canal, first, that is because it is the quicker route, and second, because a difference has to be paid, a higher rate has to be paid for that part of the distance that is carried by rail? A. Yes, it is reasonable it should be a higher rate.

Q. In apportioning the rate, the high charge, do I understand you mean the actual carrying rate by the Pacific is higher? A. No, sir, the combined rate. 556

Q. The combined rate? A. The combined, certainly.

Q. Even under such conditions it is very little higher, is it not, than the Suez rate for the same class of goods? A. In many cases 50 per cent. higher.

Q. That is 50 per cent. higher? A. In many cases 50 per cent. higher.

Q. Is not that due almost entirely to the rail rates? A. Unquestionably.

557 Q. Then there is a commercial reason why you as a shipper would send your tea and silk by the Trans-Pacific, and the commercial interests on the part of the consumer here? A. Possibly so.

Q. One of the reasons I think you enumerated in your cross-examination, that is, the interest charge, would be less? A. It would be less.

Q. That is to say, from the time they purchased until the time they got it into their hands the capital would not be idle as long, is that right? A. Exactly. The Trans-Pacific carries all sorts of cargo, it is the main part of the cargo goes
558 by the Suez, the main part of the high class goes Trans-Pacific, but as a matter of fact, some cargo, all sorts of cargo, will go by either route, some portion.

Q. But there is usually some trade reason why it would go? A. Yes, sir, high class naturally goes Trans-Pacific, and the low class via Suez.

Q. You said a moment ago that it was due to your activities largely that this competitive condition that existed in 1891 and till 1904 was obviated by making this agreement? A. Yes.

559 Q. During the time that the competition existed, were there many tramps on the berth there? A. Not many.

Q. Most of those that were in competition were regular lines? A. The tramps were in competition with the regular lines.

Q. Were the regular lines in competition with each other? A. Not in competition with each other.

Q. Did they all quote the same rate? A. Virtually so.

Q. That is to say, whenever there were tramps on the berth, why, then these lines automatically would reduce? A. Would reduce, yes, sir.

560 Q. You spoke of a final withdrawal, I am speaking of before any withdrawal, the course of business would be they would all meet the lower rate? A. They would have to.

Q. And that continued from 1891 to 1904? A. Or earlier.

Q. What were the conditions from 1891 to 1904, what lines were in existence that were not in existence in 1904, before you made the agreements, what regular lines? A. I take it you refer to New York?

Q. Yes. A. We need not go into others. So far as New York was concerned, the Warrack Line, the Gellatly, Hankey

Line, the Barber Line were in existsence and running there regularly. 561

Q. Through this competitive period? A. Yes, sir. The Shire steamers—I previously mentioned them, I need not refer to the owners—the Shire Line, the Glen Line, the Castle Line, the Ben Line, were amongst the regular steamers.

Q. About how many regular lines were there during that period? A. Seven or eight.

Q. About how many steamers would they average per sailing, I mean a month, I mean how many sailings a month? A. Oh, not more than two.

Q. During that period the aggregate of the trade was not near as great as it has been since that time, has it? A. No, very much smaller. 562

Q. There has been a general increase of the Oriental trade, has there not, from year to year? A. Yes, a great development.

Q. Since the Japanese War a very great development has taken place, has there not? A. I think not with Japan; I do not think there has been very much development with Japan.

Q. Has not China, both China and Japan trade increased? A. The China trade, export trade from China has developed enormously. 563

Q. This increase of business, then, that you have spoken of in your cross-examination, is not entirely due to the fact of the conference? A. No, it is not due to that solely.

Q. Isn't it a fact that there has been a general increase in export trade of all those countries westward? A. Certainly.

Q. And an increase in countries where there is no conference? A. I cannot say that; I do not do business with countries where there is no conference.

Q. In giving your testimony with reference to the effect of the conference upon the increase of trade, have you compared the general increase of trade all over the world where there is a conference and where there is no conference for the purposes of ascertaining to what extent, if any, conference has any effect upon it, have you done that? A. I have not done so. 564

Q. And yet you do know, as a matter of general information, that there has been a great increase all over the world? A. That is so.

565 Q. And the demand for tonnage has increased all over the world? A. That is so.

Q. When this competitive condition lasted, that must have been from 1891 to when? A. 1904.

Q. That was thirteen years, thirteen years of competition, is that right? A. Thirteen years.

Q. Thirteen years of competition? A. Yes, sir.

Q. During all that time you were in business? A. Yes, sir.

Q. And during all this time some of these houses you have mentioned were in business? A. They were.

566 Q. And were serving their customers wherever they were? A. They were.

Q. And the rates that they paid for tariff was less than it was after the conference, generally speaking? A. No, sir, not on the average.

Q. It was on the higher class, wasn't it? A. Not on the average.

Q. Not on the higher class? A. Not all through, no.

Q. How about the rate on tea? A. The rate on tea would be anything up to 70 shillings, it has never been since the formation of the conference in excess of 40 shillings.

567 Q. And since this competitive business, 70 shillings? A. Yes, sir, 70 shillings.

Q. How about silks? A. Silks have always been very high; they are only carried by the mail steamers, and their rates are always the same; tramps cannot compete.

Q. Then, in other words, the advent of the tramp never affected the rates of certain commodities, because they could only go in a certain class of vessels? A. Treasures and silks, and nothing else.

Q. What other high class of freight that you now recall
568 that was lower during the competitive period than since the conference? A. Take waste silk, a fairly valuable cargo.

Q. What was it during the competitive period? A. Anything from 20 shillings to 70 shillings; take it the same as the tea rate; straw braid the same way, it might be again, or about 20 shillings as the limit, the lowest limit, with a maximum straw braid of 60 shillings.

Q. Mr. Dodwell, do you mean to say that during each year of this competition that these rates on these specified articles were higher than they were since 1904? A. Higher on the average, yes.

Q. Do you mean to say some years they are below and 569
some years above? A. Taking it year by year you would find it higher than they have been since the conference.

Q. What did you mean on your direct-examination when, in answer to a question of mine, you said the rates, during the conference, or before the conference period, were lower than they were after the conference? A. The minimum was lower than the minimum has ever been since.

Q. What do you mean by the minimum? A. The lowest rate accepted whilst a tramp was opposing.

Q. Do you mean to say you take a rate, it would be the lowest rate that any tramp would take during the confer- 570
ence, is that what you mean? A. There might be three or four tramps loaded during the year; they would affect the rate of three or four of the lines, or maybe six or eight, and they would lower the rates by these regular lines. The moment those tramps were out of the way the regular rate was put up again.

Q. Were there many tramps in that service in these years? A. Many tramps?

Q. Were there many tramps during that period? A. Not a great number, no; there were a few.

Q. How many would they average during a year? A. 571
Five or six.

Q. In a whole year? A. Yes.

Q. Mr. Dodwell, you say they would average how many a year? A. Four to six.

Q. Then the rate between these regular lines would always be the same as between themselves until a tramp came? A. Yes, sir.

Q. And then when the tramp came they would all then simultaneously reduce their rate to meet the rate of the tramp, is that it? A. That is so.

Q. Then when the tramp left, simultaneously they would 572
raise their rates to what it was before? A. The normal rate.

Q. About where they fixed it, wasn't it? A. Yes, sir.

Q. So then it would only be six times during a whole year, say, that the tramp steamer fixed the carrying rate for any of these Oriental ports? A. Yes.

Q. And the balance of the time the tramp had nothing to do with it whatsoever? A. That is so.

573 Q. And, although you did not have any hard and fast agreement, it was the policy of these regular lines to practically act in unison on rates? A. Practically.

Q. You say that among other things the regularity was effected by competition? A. Yes, sir.

Q. If there were only six vessels a year on the berth at these important ports, and the balance of the time the regular lines were still operating in more or less unison, how would those six desultory boats affect the regularity of the regular lines? A. Those six boats would be loading part of the month each; presumably they would not be loading all
574 the same month. They would affect the sailings, you may say, over six months out of the twelve months. You can reasonably say so; if there were six sailings, it would affect the steamers that were loading during six months.

Q. It would affect the particular steamers? A. Yes.

Q. Did you have fore knowledge of the subject of when the tramps were to arrive? A. No, no; certainly not.

Q. I suppose they come and go without consultation with anybody? A. Yes.

Q. As they do generally? A. Quite so, yes.

575 Q. So that the schedule of sailings made by the home office, wherever that was, would not be regulated by the number of tramps that appear in this unexpected manner at desultory times, would it? A. The home office had nothing to do with the schedules of sailings in those days.

Q. You had a certain number of boats in the traffic? A. Yes, sir; it was left in the hands of people abroad.

Q. Entirely abroad? A. Yes.

Q. They arranged their numbers of sailings without the reckoning of the possibility of a tramp dropping in now and then? A. Quite so.

576 Q. How was it possible that the regularity of the sailings was affected by the advent of desultory tramp steamers? A. The cargo would be taken away from them, and their sailings would be interfered with.

Q. Do you mean to say by that, that they would take off steamers because tramps were in the berth? A. The regular steamers would have to stop at other places.

Q. They would still be in the trade? A. If there was no cargo, they would have to go elsewhere and get it, if the tramp steamer had taken it.

Q. Would one tramp steamer take all there was? A. The regular steamers provided all the tonnage that the trade wanted; if a tramp came in, it simply put a steamer out; the regular steamer had to find a cargo somewhere else. 577

Q. As far as the shipper was concerned, what difference would it make to him whether the cargo went on a tramp or a regular steamer, as long as one went? A. It would not make any difference; he would get it carried forward.

Q. He would get it carried forward? A. He would, yes.

Q. Can you state with any degree of certainty how many sailings of these various lines in any one year during the competitive period were decreased because of the appearance of tramps? A. I can only tell you in a general way. Afterwards the parcel shipments dropped out. 578

Q. That was after a long period of time? A. Yes.

Q. You testified that was after thirteen years? A. And during those thirteen years the parcel lines dropped out.

Q. At what part; the beginning or the end? A. Towards 1896 and 1897; the Shire Line, the Glenn Line, and the Ben Line, during those fourteen years, gradually dropped out until they did not load parcel freight.

Q. At what period was it? A. They were gradually going out of the business, because of the uncertainty. 579

Q. Was it because of the six desultory tramp steamers that were occupying the berth there during the year; was that the reason? A. Because of the uncertainty of their being able to get regular cargoes at a rate of freight which they considered reasonable.

Q. Well, regardless of their motive, I am asking you about the result; during the first two or three years, did they decrease their service, each one of these lines? A. I cannot tell you; it would be a very long job to hunt up exactly how they dropped out. 580

Q. As a matter of fact, Mr. Dodwell, didn't the final retirement, or was not the final retirement of these lines that you have mentioned, caused by other conditions than the mere fact of the advent of the tramp steamers? A. The boats that I spoke of dropped out of the New York loading, because they could do so much better in the European loading, and they were members—

Q. In 1903 and 1904? A. They were then members of the conference, the European conference; it was in existence,

581 and had been in existence, and they are to this day running in that European conference.

Q. I take it from your answer to Mr. Kirlin's question that you wished to convey your impression that these lines all retired because of competition? A. That is so.

Q. And you are prepared to say now that there was no other cause that contributed to their retirement? A. They could do better elsewhere, as is proved by their remaining in the trade where they are to this day; in conference; working in conference. A conference, not our conference.

Q. That is argumentative; I wish you would answer my
582 question. Was there any other cause that you know of, that in any way contributed to those lines withdrawing from that trade, than those things? A. None whatever.

Q. They all carried silks and straw braids and those commodities, to the American ports, did they not? A. Not silks; silks only go by the mail boats.

Q. Did they carry tea? A. Yes, tea.

Q. And they also carried these other products that you speak of? A. Yes.

Q. Now, Mr. Dodwell, isn't it a fact that in 1893 and 1894,
583 and even up to 1896, the entire Oriental trade with the United States was affected by the trade depressions in this country? A. I do not think so; I do not remember of there being anything that affected the exports from China and Japan.

Q. Would it interest you to know that from 1893 up to 1896, the Custom House records here show that the imports from the Orient had fallen off to a very appreciable degree? A. It would.

Q. Would that surprise you? A. Not at all.

Q. You do know, don't you, that we had a period of busi-
584 ness depression here that largely affected industry during that time? A. I know that that occurs from time to time in every country.

Q. You do know, as a matter of fact, that we had that depression here from 1893 to 1896? A. Yes.

Q. What lines remained in the service? A. The Barber, the Warrack's, Gellatly Hankey's; Royden's being one of the opposition tramps before that.

Q. Royden's you say were tramps before that? A. Do not put me on record, please, as calling their steamers tramp;

they are much better steamers, now at least. They were tramping then; that was so, but they were not tramps. 585

Q. How many boats did the Roydens have in the berth there each year? A. About a dozen; I think about a dozen.

Q. Then you may say in addition to the Royden's, there were the six tramps every year? A. I am speaking of all these others; I have mentioned Warrack's.

Q. I do not want to have you misunderstand me, and therefore I do not want to take any advantage of you. I understood you to say a while ago that you averaged, from 1901 to 1904, about six tramps a year? A. Yes.

Q. Did that include the Royden boats? A. No. 586

Q. Then in addition to the tramps, you had the Royden's? A. Yes.

Q. And what is the other firm? A. The others were boats which we were loading.

Q. Then with the exception of the six tramps and the Royden's, all the other boats you were loading? A. We were not loading the Glenn's, or the Ben's. We did load some of the Shire's, and we did load some of the Castle.

Q. As to the Royden rates, were they the same when the six tramps were not there as the regular line rates? A. From time to time they cut rates. 587

Q. From time to time? A. Yes.

Q. Mr. Dodwell, let us have this Royden situation cleared up; was the Royden line running a regular line, too? A. Not until they joined the conference, not until 1904.

Q. From 1901 to 1904 they had, you say, about a dozen boats a year? A. Yes; not so many as that.

Q. You said that a moment ago, did you not? A. Yes; not from 1891, you are going back too far for me to remember. If you will take it up somewhere from about 1901, I could expect to remember, but 1891 is too far; it is over twenty years. 588

Q. I do not expect you to be accurate about that; in a general way, how many boats were the Roydens operating every year? A. Towards the time of the competition ceasing in 1904, Roydens would have been loading perhaps a dozen boats a year; they had gradually increased from six to a dozen.

Q. From what date? A. From perhaps 1898.

Q. From 1898 up? A. Yes.

589 Q. What would be your estimate of the number of those boats they would have on the average before 1898? A. Perhaps two to seven; they gradually worked it up until they had about a dozen sailings.

Q. Was the class of boats the same as the tramps that you speak of? A. They were of a better class.

Q. Of a better class? A. Yes.

Q. They had a large number of those boats, did they not? A. Yes, they owned a great many boats.

Q. And they were what you call a regular line? A. Yes.

Q. Although they were not regular in the business? A.
590 Yes; but they were fighting their way in.

Q. When one of the Royden boats would be in the berth, with one of the regular line of boats that you speak of, and there was no room, then what happened to him? A. Providing an arrangement was not made, there would be a fight.

Q. Arrangements, I suppose, were frequently made? A. Sometimes, yes.

Q. And at other times they were not? A. Yes.

Q. And the result was, that the Roydens would quote a
591 rate which the regular line would have to meet? A. Yes.

Q. And would meet? A. Yes.

Q. When that boat went off, and there was not any tramp there, then the regular line boats would raise the rate again? A. Yes.

Q. When the Royden boats were there and a tramp boat was there, then what happened? A. Everybody suffered.

Q. You mean by that that the Roydens went down to the tramp basis, and the regular lines as well? A. Yes.

Q. And again, when that boat would go away, then the Roydens and the other lines would come up? A. Yes.

592 Q. Is that it? A. Yes, that is so.

Q. So that without having any written or hard and fast agreement, the policy was a great part of the time, between the Roydens and the regular lines, that there should be a more or less uniformity of rates? A. First the Roydens were in opposition. Later on—

Q. (Interrupting.) We will say from 1898?

MR. KIRLIN: Let him finish.

A. Later they were allowed to come in; they were not opposed.

Q. What do you mean by that? A. That they were not 593
interfered with; if a Royden boat were put on, and she was not pressed to force another boat out, she was allowed to load; but if she was forced forward, to force another boat, a regular boat, then they would try to stop it or make her pay for it.

Q. What do you mean by that? A. They lowered the rate. Q. In other words, if the Roydens had a boat there, and that did not interfere too much with the regular line, then you did not change the rates? A. Yes.

Q. But if they would not wait for their turn, then you im- 594
mediately cut the rate? A. Then we opposed it.

Q. So that in that instance it would be the regular lines that would be cutting the rate rather than the Roydens? A. Yes.

Q. That happened quite frequently, I suppose? A. Undoubtedly.

Q. Then along down towards 1904 they had become so important that you finally had an understanding with them? A. Yes.

Q. Then you did not have that competition? A. That is so. 595

Q. How long did that last A. Well, that lasted only for a very short time, until the conference was formed.

Q. Did it last three or four years? A. No.

Q. Two or three years? A. No.

Q. Did it last a year A. May be.

Q. The fixing of the rates during the time that the tramps were not in the berth was not regulated at all by the value of the tramp tonnage, was it? A. Not by the value of the tramp tonnage, no.

Q. Nor by the tramp rate? A. How can you put a value on tramp tonnage that does not exist? 596

Q. That is precisely what I am bringing out. You have testified upon that point exactly that the value of the tonnage is regulated by the value in the market of the tramp tonnage? That is right.

Q. When the tramp was not there— A. Yes.

Q. The rates had no relation to tramp tonnage, did they? A. No.

Q. That is, as far as the associated lines were concerned? A. No.

597 Q. And it was only at times when the tramps were there that the tramp regulated the tonnage, the value of the tonnage? A. Yes.

Q. That is so, is it not? A. Yes, that is so.

Q. The tramps did not get the higher class commodities, did they, that had to be delivered rapidly? A. In those days the tramps would carry almost anything; not silk, of course. I except the silk and treasure; both are entirely excepted, the silk and specie.

Q. Silk and what? A. Treasure, specie.

598 Q. Was the difference as far as the receiving merchants were concerned, that is to say, their interest in cutting off interest charges and all that kind of business, any different in 1901 to 1904 than it was afterwards? A. I think merchants got in the way of desiring to have their cargo brought forward very quickly. You do not change the course of trade in a day or two. They had been used to fairly slow deliveries.

599 Q. Do I understand that from 1891 to 1904 there was not a fast freight service, or a comparatively fast freight service by way of the Trans-Pacific? A. There was a service a little better than the tramp steamers; there were some fast steamers, but the majority of the steamers on the Pacific were very little better than the tramp class.

Q. How did that compare way back there with the class of steamers which were loaded by the Suez route? A. Slightly better.

Q. Yours were slightly better? A. Theirs were slightly better than ours.

Q. Theirs were slightly better than yours, you say? A. Yes.

600 Q. Then so far as the facilities for rapid service were concerned, from 1891 to 1904, the shipper who desired to get his commodity to the consumer in the United States rapidly could have had that consummated by the Pacific route equally as well, at least, as by the Suez route? A. He could.

Q. So that the desultory tramp steamers did not regulate the tonnage by way of the Pacific, did they? A. Yes, they did.

Q. Regardless of the fact that speed was one of the essentials to the consumer? A. The Pacific rate is a higher rate than the Suez rate, and it is affected by the opposition of

the Suez. If the tramp steamer takes a low rate, the Pacific rate is frequently affected, and has been affected. I know of tea being carried across to New York via San Francisco, via Tacoma, via Vancouver at 75 cents per hundred pounds, right from Shanghai to New York. To-day's rate by the railway is $1.25. 601

Q. In other words, they took the loss for some reason or other? A. And that included the steamer's proportion as well; that was in opposition. That was when there was fighting that the Trans-Pacific rate was affected.

Q. It never has occurred since the fighting? A. The fighting on the Trans-Pacific? 602

Q. Yes. A. I do not think there has been any fighting on the Trans-Pacific during the last ten years.

Q. Coming down to my question again, if there was a commercial reason why merchants in the United States wanted a quick delivery of high class goods, and that service could be made by the Pacific route, combined water and rail route, why would the rate for that service be affected by slow tramp tonnage that went by the Suez? A. It stands to reason if you will send via Suez at say a low rate of freight which more than covers all the excess insurance, all the excess interest, and a merchant can still save on it, he will send via Suez, even if it is faster cargo. 603

Q. But that would only occur when the rate offered by the tramp would be so low that the advantages which he would reap by sending by the faster service by way of the Pacific, would be nullified by the lower rate; is that right? A. Yes.

Q. That could only happen, according to your testimony, six times a year? A. On an average, yes.

Q. That could only happen six times a year on an average? A. Yes. 604

Q. Then for the balance of the time, the Pacific rate would not be affected by the tramp steamers at all? A. The Pacific rate was not affected, you might say.

Q. How did the tramp steamers during this competitive period, compare with the regular line in size and speed? A. It was somewhat inferior.

Q. Were there not a good many of the tramp steamers at that time quite equal to some of the boats that you loaded? A. Possibly so; not many.

605 Q. What would be the average tonnage, gross, of the tramp steamers that were in the business? A. It is impossible to say; it varies so tremendously.

Q. Some of them were pretty good boats, were they not? A. Not among the tramps.

Q. None at all? A. Not amongst the tramps.

Q. Then some of your boats were better than theirs? A. Yes, sir, they were better.

Q. And some of your boats were not so very much better than the tramp steamers, were they? A. They were better in point of speed; and better in point of equipment.

606 Q. Materially better? A. The underwriters thought so.

Q. You mean to say that they made a different rate? A. They made a different rate.

Q. Is not the rate always based more or less upon the character of the vessel? A. Largely so, but not entirely so; an underwriter will give a better rate to a regular line, even if it was composed of all tramp steamers, than he would give to an individual tramp.

Q. Because of the responsibility of the owners? A. Yes.

Q. That had nothing to do with competition, had it? A. No.

607 Q. As a merchant, Mr. Dodwell, how do you conduct your business; do you consign your goods to the United States, to your representatives here, or do you sell outright? A. We do both.

Q. When you consign your goods here, to your representatives, you lay the goods down here, with the cost of carrying, which means carriage charges, interest and freight? A. Yes.

Q. All added,—do you not? A. Yes.

Q. In that case then, what you pay for the carrying charge here to this port, to the United States, becomes an item of

608 considerable consequence in the selling price that you place upon it; is that not right? A. Yes, it does.

Q. So that if you are paying a rate which is higher at one time than another, when the goods are finally laid down here, the price that you would quote to the customer would be based upon the rate, would it not? A. Undoubtedly.

Q. In that analysis, it would be very much to the interest of the consumer, of course, to get the goods as cheap as he can? A. Quite so.

Q. And if you have had the benefit of competition as a shipper, the benefit of the lower rate, the consumer gets the advantage of it here, does he not? A. He does. 609

Q. When you make your contracts direct, where you sell, how do you arrange about the carrying charges and the insurance, etc.? A. Everything depends on the terms of your contract, whether it is c. i. f.

Q. C. i. f. means charges, insurance and freight, does it not? A. Yes, charges, insurance and freight; whether it is on the f. o. b. shipments, free on board shipments.

Q. So in the case of c. i. f., that means that the consumer pays your price plus these charges? A. That is so. 610

Q. And where it is f. o. b., that means that your responsibility ends with the ship; the delivery on board the ship? A. That is so.

Q. And it is up to him to pay all those charges? A. That is so.

Q. Then in the case of f. o. b. shipments, it is very much to the consumers advantage to have as low a rate as possible? A. Just the same as with c. i. f., all the same. There is no distinction.

Q. I am not asking you that; I am asking you if it is not very much to his advantage; not whether it is as good as something else, or not; that is true, is it not? A. That is quite right. 611

Q. And that if it is c. i. f., the only difference would be that he pays those charges here; rather, he arranges for those charges at the shipping point; is that right? A. The freight is ordinarily paid here, at the port of destination.

Q. F. o. b. at whose risk; the goods are at the risk of the shipper f. o. b., are they not? A. They are at the risk of the shipper.

Q. Who makes the arrangement for the payment of freight? A. The consignee. 612

Q. Do you arrange that for him? A. We take care of the bill of lading. He pays the current rate of freight.

Q. You finance that in some way in advance, do you not? A. No; the freight is not payable until arrival, until the delivery of the goods.

Q. In both instances then, the freight is paid upon arrival? A. C. i. f. ordinarily the freight will be paid at the port of shipment.

613 Q. That is what I ask you again; I understood you to say it was the same in both instances, and I could not quite understand it. In f. o. b. shipments you get the bill of lading and forward it to the purchaser, the owner, do you not? A. Yes.

Q. And when it arrives here, he takes care of those charges? A. That is so.

Q. That is, f. o. b. shipments? A. Yes.

Q. And where the shipments are c. i. f., you arrange for the payment of the carrying charges at the point of shipment? A. Yes.

614 Q. Have I got that right now? A. Yes; where I made my mistake is in this; it is so often the case that the goods are shipped partly c. i. f.; they are shipped "c" and "i" only, leaving the freight to be paid, deducting the freight.

Q. There was an apparent discrepancy there which I could not understand. Then in the final analysis, so far as the purchaser or the consumer is concerned here, the amount of the charges must affect the cost to him? A. Certainly.

Q. And if the carrying charges are higher, he pays a higher rate? A. Certainly.

615 Q. And if the carrying charges are less, he pays less? A. Certainly.

Q. What proportion of your business in the United States would you say is handled by your representative, where you consign. I have no desire to go into details? A. Only a small proportion, comparatively a small proportion; say a quarter. I am speaking offhand, you understand.

Q. What proportion of it would be f. o. b.? A. Of our own business?

Q. No; in your business as a merchant, where you sell in the United States, what proportion of that business would

616 be f. o. b.? A. Of the balance?

Q. Yes, of the balance, of course? A. Probably a half f. o. b., and a half c. i. f.

Q. In the case of the shipments that you make f. o. b., who gets the rebate? A. We do.

Q. And in the case of the c. i. f. shipments? A. The shipper, we.

Q. In the case of the consignment, you get it? A. We get it; we are the shippers.

Q. You are the ones who get it? A. Yes; we may make an 617
arrangement with a man we are doing a f. o. b. business with, to give him the rebate.

Q. Do you do that? A. Very often.

Q. Here in the United States? A. Certainly.

Q. Often, you say? A. Yes, often.

Q. In other words, as an inducement to him? A. He will get the benefit of the rebate.

Q. You may say you will give him all the rebate or a part of it? A. Yes.

Q. What proportion of your business is it that you divide the rebate with the merchant here? 618

MR. KIRLIN: Not divide it; give it to him.

A. I could not tell you; it is impossible to tell.

Q. You have a general idea of most things; I should think you could hazard an opinion? A. I have said,—what was it, a quarter of our business?

Q. You said a quarter of your business was consigned business? A. Yes.

Q. To your representative? A. Yes; the balance would divide about a half being f. o. b. The receiver here would get the benefit of the rebate of that portion; not c. i. f. We 619
get the rebate.

Q. You said a moment ago you would get it? A. We collect it in all cases, and sometimes pay it back.

Q. That is what you mean? A. We collect it in all cases; it is only payable to the shipper.

Q. In the one half of the balance in your trade other than consigned business, you retain the rebate, and one half you pay to the merchant here; is that the idea? A. Yes.

Q. While I am on the subject of rebates, these three firms that you mentioned that got this additional five per cent. 620
commission, I understand you to say that was in addition to the ten per cent.? A. That is so.

Q. And everybody would get it who consigned all those shipments to these lines; they got the additional commission of five per cent.? A. That is so.

Q. In answer to one of Mr. Kirlin's questions, you said that that was discontinued? A. Yes.

Q. And you gave a reason for it; as I recall, you testified that the reason was because the Straits Government had

621 protested against the doing of that; is that right? A. That is right.

Q. So that the real reason why it was discontinued was not because it was obnoxious to you or to your confreres, but because the Straits Government insisted that you should stop it? A. They had been petitioned—

Q. Answer the question as I put it; I know that you have very good counsel here, and they can take care of you; if you cannot answer it say so? A. I want to give you the actual facts.

622 Q. I know you want to be perfectly honest, Mr. Dodwell; there is no question about it? A. I do not want to keep anything back. I want you to know exactly what it was. A petition was brought up in Singapo[illegible]nd presented to the Governor, and the Governor then [illegible]t it up to the conference.

Q. You testified yesterday t[illegible]n why this was discontinued was because of [illegible] the local authorities in the Straits. You sai[illegible]o many words that it was discontinued because the Str[illegible], Government had raised a protest against conferring these special benefits. In answer

628 to Mr. Kirlin's question to-day you said that the reason was because you recognized it to be obnoxious and bad practice, or words to that effect? A. Yes.

Q. And that you went about to discontinue it? A. Yes.

Q. The three shippers resisted that quite a bit, did they not? A. They did.

Q. For a considerable period of time? A. Yes.

Q. Isn't it a fact that was brought about because they were paid a lump sum as a consideration to consent to have it discontinued? A. With the consent and approval of the Government.

624 Q. I know, but you gave the reasons yesterday; and you did not mention the fact that they were finally paid a lump sum to consent to it? A. That is so; that is so.

Q. How much was that? A. The actual figures I could not tell you; it represented a little over a year's purchase.

Q. Not having any figures, Mr. Dodwell, could you give a general idea? A. Roughly speaking, as long as you do not tie me down, I should say 10,000 pounds.

Q. You should estimate 10,000 pounds? A. Yes.

Q. Isn't it a fact that they declined absolutely to forego 625
those special commissions until the conference did meet them upon the sum of money that they would accept, namely, about $50,000? A. That is so.

Q. You say that their business was of such a character and of such a quantity, that they were necessary to the regularity of your sailings; did I understand you correctly about that? A. That is right.

Q. What was their class of business? A. I beg your pardon?

Q. What was their class of business; what did they ship? A. Straits produce of all descriptions. 626

Q. Why were they necessary to your regularity of sailing? A. They had this dead weight cargo which we wanted; it was good stowage.

Q. Had you not had regular sailings before that? A. We had. We could not maintain our sailings unless we had their cargo to help us through, which was necessary to have.

Q. About how many sailings did you have before you made this agreement with them to pay the extra five per cent.? A. Nearly the same number.

Q. You had nearly the same number of sailings? A. Yes. 627

Q. As you have since? A. As we have since.

Q. Perhaps I do not make myself clear; what I want to know is, if you have had the same since as you had before, why did the fact that they agreed to confine all of their shipments to your line, affect the regularity of sailings? A. We were never certain of getting their cargo then; they might charter and they did charter outside.

Q. You mean to say, that without confining themselves entirely to the conference, that the owners could not do business at a profit; is that the idea; is that what you mean? A. I do not quite follow, Mr. Baldwin; without what? 628

Q. Without their business, do I understand that the owners could not do business at a profit? A. They could do business at a profit, certainly. It was more in our interest to get them with us, and not have them in opposition.

Q. You are coming to my point now? A. Yes.

Q. The point then is, that it was a purely selfish reason, on your part to have them with you? A. Certainly.

Q. And it was not due to the fact that you could not main-

629 tain the regularity of sailings? A. It enabled us to maintain regularity.

Q. You said a moment ago you had not changed? A. Nearly as many, but it was uncertain prior to that.

Q. Didn't you have regular sailings before that? A. Not as regular as we did afterwards, certainly. We may have had as many sailings, but not as regular. We could not send the boats away at steady intervals, as we have since. We could not do so then.

Q. Your purpose was to serve the trade there to the best of your ability, was it not? A. It was.

630 Q. And if there was a cargo there before, which was looking for outward passage, you supplied the vessels, didn't you? A. Occasionally; not always.

Q. Not always? A. No.

Q. Or any of these other regular lines? A. Not always; some of the regular lines carried forward cargoes.

Q. For instance, if you take in the number of sailings that were provided for with the competition, were they modified at all because you did not have these three particular shippers? A. 46 was the original number.

631 Q. For instance, Mr. Dodwell, in the agreement of 1905, Exhibit 8, there is provided a number of loadings among the conference lines, aggregating 46 per annum? A. Yes.

Q. You testified in your direct-examination that that was lived up to? A. Yes.

Q. In other words, that that requirement was complied with? A. With 42 sailings in 1905.

Q. The provision here is for 46 in 1905? A. Yes, but we did not reach 46.

Q. What did you do in 1907? A. 48.

Q. You had two more? A. In 1906 we had 48.

632 Q. What about 1909? A. In 1909, we had 65 (looking at memorandum).

Q. And in 1910? A. 66.

Q. In this memorandum, the number of sailings as appears in this exhibit, each year was increased until there was a total of 53? A. Yes, that was a series.

Q. And then in 1911 it went up to how many? A. 67.

Q. But here there is a provision for 59? A. That is so, yes.

Q. When was it that this agreement was made with these three people for this five per cent.? A. The 15th of September, 1905. 688

Q. Then there was only one year, practically, or a little less than a year, that they were not getting that? A. That is so.

Q. And it was discontinued, you say, in 1911? A. In 1911 or 1912; I cannot quite recall when.

Q. In Exhibit No. 7, July 24th, 1904, the number of sailings provided for is 46, precisely the number that was provided for in the agreement of 1905? A. Yes.

Q. In that year, after the first agreement was made, the conference agreement, Exhibit 7, did you decrease the number of sailings or the regularity in that one year? A. We took in the opposition and lowered the number that was to be loaded by the regular lines. You will see in the second agreement we have put down to load 15½ as against 18 previous. 684

Q. I do not think you understand my question; in 1904, these three shippers were not getting this special commission of five per cent., were they? A. No; they were supporting the opposition, especially the Houlders.

Q. And you testified that the main reason you wanted them in, was to establish regularity of sailings? A. Yes. 685

Q. I am asking you now if in 1904, and before they came in, and in 1905, did you decrease the number of sailings? A. We had 42 sailings.

Q. What is that? A. We had 42 sailings.

Q. In other words, four less? A. Yes.

Q. Than what you agreed upon? A. Yes.

Q. Was the decrease of the four sailings occasioned by the fact that they were not in? A. Presumably so.

Q. Mr. Dodwell, you must know that a presumption is not an answer to my question? A. They loaded some other boats. I have no record of what boats they loaded; the Singapore firms loaded some chartered boats in opposition. 686

Q. Was it due to the fact that you finally persuaded them to come in and take this 5 per cent. commission, that the sailings were increased after 1905? A. I think it was largely due to that; they were always willing to come in, if we would pay the five per cent.

637 Q. I didn't ask you that, but I assume that is so. Didn't you testify upon your direct-examination that the number of sailings which occasioned a modification in Exhibit 8, was due to the fact that you took in the opposition, and you mentioned the lines? A. The Houlder line, yes.

Q. So then the reason, Mr. Dodwell, for increasing the number of sailings was not because you had persuaded these three favored merchants or shippers rather, to come in, but because you had to make provision for the Houlder sailings; is that the real reason? A. The Houlder line was supported by the Singapore people; they were their mainstay, the
638 Houlders were, in opposition.

Q. In other words, the Houlder line during 1904 was getting the business of these three shippers? A. Largely.

Q. So that when you made your agreement with the shippers to pay them 5 per cent., simultaneously you took in the Houlder line; is that the idea? A. Just before.

Q. Just before? A. Yes.

Q. But as a part and parcel of the general cleaning up, was it not? A. Yes.

Q. Then it was by the combination of the two; that is,
639 the taking and the doing away of the competition of the Houlder line, and their becoming a part of the conference, and carrying with them the business of the three merchants, by paying this extra five per cent. commission, that those increased sailings took place; that is right, is it not? A. Yes, of the regular line.

MR. KIRLIN: Also doing away with their charter.

Adjourned to Monday, May 19, at 10 o'clock A. M.

New York, May 19, 1913.

640 Met pursuant to adjournment.

Present—GILBERT H. MONTAGUE, Special Examiner.

APPEARANCES:

(Same as before.)

GEORGE BENJAMIN DODWELL resumed the stand.

RE-DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Dodwell, if I understand you correctly, there were about seven very large shippers over there? A. Yes, sir;

Q. Their business practically embraces the large per cent. of the export business of the United States? A. The majority; I would not like to say a very great percentage; say more than 50 per cent. 641

Q. As much as 70 per cent., isn't it? A. No, I would not like to say that.

Q. It might be as much as 70 per cent.? A. I would not like to say that.

Q. However that may be, what per cent. of the shippers outside of those seven have made these time contracts with the conference since the conference was formed, by which they agreed to send all their shipments by the conference to get the rebate? 642

MR. KIRLIN: He has not said there were any time contracts.

A. Virtually all of the shippers have made that agreement with the conference.

Q. So that the result is, that since the conference was formed down to the present time, practically all of the export trade of the United States from China ports has adopted this conference method of doing business by which they, the shippers, get the rebate? A. Practically all. 643

Q. You say that there have been no cases of disloyalty, excepting the one that you mentioned? A. Yes.

Q. And in that case it was of such a character that you did not feel like urging the penalty? A. We thought it was better to waive it.

Q. In other words, it was so insignificant? A. Yes.

Q. That you waived it? A. Yes.

Q. So when your answer was to the effect that there have been no disallowances of the rebate, because of the failure to perform— A. I am not aware of one case. 644

Q. Let me finish; that it was due to the fact that all the trade was practically doing business under those terms with the conference, and they adhered to the contracts? A. That is right.

Q. Can you give me an approximate idea of how much your firm's rebate amounts to in this conference, a year, as shippers? A. It would vary very largely; you might say, varying from 5,000 pounds to 15,000 pounds per annum.

645 Q. Have you any idea, approximately, of course, how much in rebates are paid each year by all the conference lines to the shippers, in the aggregate? A. I think those figures in that exhibit would give me the data.

Q. Defendants' Exhibit 1? A. That exhibit that you objected to, it gives the gross earnings; I think it would tell you approximately.

Q. Of course, you understand, I am speaking about the conference, this present conference in suit here, with reference to that business westward? A. Yes, purely so; this westward business purely; it would run from 25,000 pounds to
646 65,000 pounds, approximately.

Q. How much, approximately, was paid per year by the shippers to the conference in freight westward? A. From 250,000 pounds to 650,000 pounds.

Q. That means that you take ten times the previous figure? A. Yes, taking about a tenth, or ten per cent. in the first place.

MR. KIRLIN: 250,000 pounds to 650,000 pounds?
THE WITNESS: Yes.

647 Q. Can you give me, Mr. Dodwell, approximately the amount that was paid to these other seven firms, in the way of rebates? A. The other seven large shippers?

Q. The other six; I think you said six or seven. For instance, you testified the other day in answer to a question of Mr. Kirlin, that in making up the revisions of the tariffs at various times, that the merchants were consulted? A. Yes.

Q. What merchants? A. The very large shippers.

Q. And they were whom, again? A. In Singapore, they were represented by the firms that I have mentioned before;
648 Boustead & Co., Paterson, Simons & Co., Adamson & Gilfillan, Huttenbach & Co., Behn, Meyer & Co., in Manila it would be the representatives in London of the following firms: Smith, Bell & Co., Stevenson & Co., Ker & Co., MacLeod & Co., Macondray & Co., Germann & Co. In Hong Kong, Jardine, Matheson & Co., Arnhold, Karberg & Co., Carlowitz & Co., Siemssen & Co., Butterfield & Swire, Reuter, Brockelmann & Co., besides the firms that were agents, that were representing the conference.

Q. You have mentioned, with reference to Hong Kong, Carlowitz & Co.? A. Yes. 649

Q. They represent the Union Steamship Company of Hamburg, don't they? A. Yes.

Q. In this conference? A. They did; that was withdrawn. They did up until the Union withdrew, and then the Hamburg-American took their place.

Q. Didn't Behn, Meyer & Co. represent the Hamburg-American Line, the Union Steamship Company of Hamburg, and T. B. Royden of Singapore? A. Yes.

Q. And Paterson, Simons & Co. are the representative of Dodwell & Co., your line, are they not? A. Yes. 650

Q. And Gilfillan, Wood & Co. represented Shewan, Tomes & Co., did they not? A. That is right.

Q. And in the Manila trade, were not Behn, Meyer & Co. representing the same lines, that is, the Hamburg-American Line and the Union Steamship Company of Hamburg? A. Yes.

Q. And in the Manila trade Stevenson & Co. represented T. B. Royden? A. Yes, Stevenson & Co. represented Royden.

Q. Macondray & Co. was one of the merchants that you have mentioned? A. Yes. 651

Q. How about Castle Bros., Wolf & Sons, are they merchants? A. Yes.

Q. Did you consult them? A. I could not say.

Q. On the Malabar Coast, Volkart Bros. represent the Hamburg-Amerika Linie, the Union Steamship Company of Hamburg, and T. B. Royden, do they not? A. Yes.

Q. Do you consult them? A. Yes.

Q. And Pierce, Leslie & Co. represent you, Dodwell & Co., Limited, Shewan, Tomes & Co., the Anglo-American Oil Company and the American & Oriental Line? A. Yes. 652

Q. In the Malabar trade? A. Yes. In speaking of the Malabar trade, I forgot to mention another firm, that of Darragh, Smail & Co.

Q. Ker & Co., didn't they represent some steamship companies? A. I do not think they did.

Q. How about MacLeod & Co.? A. MacLeod & Co., they represent some, but I do not think in New York, I am not sure.

653 Q. They represent some steamship line that operated in some other conference? A. Yes, they did.

Q. Don't they represent this line, this conference? A. MacLeod?

Q. Yes. A. Yes.

Q. Let me ask you this: do they represent any of these lines in any other field? A. I think it is very likely; I think so.

Q. How about Shewan? A. I do not think they represent any steamships.

Q. In any conference? A. I do not think so.

654 Q. How about Stevenson & Co.? A. Stevenson & Co. may represent some German line in the European conference.

Q. Your best impression is that they do? A. They used to; I do not think they do now.

Q. They did for some years? A. Yes, for some years they did. I do not think they do now.

Q. How about Butterfield & Swire? A. Butterfield & Swire represent the Blue Funnel Line.

Q. That is the line that runs to the Trans-Pacific? A. Yes, as well as pretty well all over the world.

655 Q. How about Reuter, Brockelmann & Co.? A. I do not think they represent any steamship lines.

Q. They did for awhile, did they not? A. It may have been so; it was something that was very short.

Q. Did you consult any others in addition to what you have mentioned? A. I do not remember.

Q. Did you confer with the Standard Oil Company, the Anglo-American Oil Company? A. Certainly.

Q. You did? A. Certainly.

Q. Then, as a matter of fact, Mr. Dodwell, these shippers, the majority, at least, of the shippers that you conferred 656 with from time to time when there was an adjustment of rates, were agents for the steamship lines, or some of the steamship lines? A. Possibly so, yes.

Q. Is it not a fact that practically all of the business on regular lines to and from the Orient, either from this country or abroad, is under conference? A. It is practically all under conference except the Trans-Pacific.

Q. Excepting the Trans-Pacific? A. Yes.

Q. You have already testified with reference to that, that you were very friendly, and that you continually met; and

while you did not have any hard and fast agreements, you had sort of a gentlemen's agreement by which your rates should be substantially the same? A. There is nothing definite. The Suez may lower or raise rates; the Trans-Pacific may lower or raise; but in all ordinary working, we would try not to go and cut one another's throats. 657

Q. You have frequent meetings? A. No, no; we have frequent informal meetings, not meetings of a formal nature.

Q. I do not mean by that that you had a meeting called under any agreement, pursuant to a particular notice, but that you were continually in conference with them in an informal way on the question of rates? A. I might say that most of these meetings took place at the club, mostly at the bar. 658

Q. Which has a very good effect on having minds agree, does it not? A. Yes, the clubs out there, Mr. Baldwin, are in the nature of exchanges, really they are. Men meet there for business, always at twelve o'clock, or thereabouts.

Q. Mr. Dodwell, as I understand your testimony, you had no agreement and you did not meet in pursuance of any particular notice, but in a friendly way you would get together at this club, or bar, whatever it may be? A. Yes.

Q. And you would discuss these rates, and you would see to it that you were not cutting each others' throats, is that about it? A. That is about it; there would be a friendly discussion from time to time. 659

Q. You have already testified that uniformly, since the conference, the Suez rate and the Trans-Pacific rate, as far as the ocean haul is concerned, is about the same? A. What is that?

Q. The Trans-Pacific Ocean carrying rate and the Suez rate is practically the same, is it not? A. It is rather difficult to define that.

Q. You have testified to that— 660

MR. KIRLIN: He said they were higher.

Q. When you add to it the rail rate, it is higher? A. I could not tell that the Trans-Pacific steamers received as much for their carriage of the cargo as the Suez steamers did.

MR. KIRLIN: As much for their proportion?

THE WITNESS: For their proportion, the Trans-

661 Pacific steamers would not get as much as the Suez steamers.

Q. But by reason of the added rail rates, which would deliver the goods to the distributing point quicker, the aggregate of the two, that is to say, the ocean rate and the rail rate would make it a little higher than yours? A. Yes, distinctly so, much higher.

Q. Is it a fact that these Trans-Pacific Lines that you have mentioned, the Blue Funnel Line and the others, operate in conference? A. The Trans-Pacific Lines, I believe, do not
662 operate in conference.

Q. Don't they issue circulars to the trade by which rebates are offered to the shippers? A. I haven't any knowledge of that; I have no knowledge of it. They issue a tariff; they print a tariff.

Q. In which the rates are common rates for all? A. They are common rates for all; I have seen the printed tariff; I cannot say that I have given it much attention.

Q. That is about the substance of it, that they have a printed tariff in which there is a uniformity of rates? A. Yes, with some articles being excepted, not included in any
663 tariff; hemp, for instance, is one of the exceptions; sugar is another.

Q. When you would meet in these informal conferences, that you would have at the club, would you meet with the agents of each of the lines, or some person that represented those lines in conference? A. On the contrary, it would be with the individual, purely.

Q. Mr. Dodwell, does not your Tacoma house meet in conference more or less with these Trans-Pacific Lines? A. I understand that on the business from Tacoma out, there is a bureau at Seattle. They meet often for the purpose of
664 arranging rates, as far as they can arrange them.

Q. As between those lines? A. There is no rebate between the various lines running from San Francisco north to Vancouver inclusive; that would be San Francisco, Portland, Tacoma, Seattle and Vancouver. The representatives meet or correspond through a secretary in Seattle.

Q. With what secretary do they correspond formally? A. A man named Benson.

Q. He corresponds with whom at Hong Kong? A. There 665
is no correspondence with Hong Kong.

Q. Doesn't he correspond with the secretary of your conference there? A. No; I do not think there is any foreign correspondence; I do not see the correspondence from the bureau, or see any letter that we as agents for the Blue Funnel Line write to Mr. Benson. The secretary of their bureau recommends the reduction or the increase in rates, or some condition in connection with the carriage of certain cargo, to be submitted to all the members for discussion and approval.

Q. You mean your Tacoma office? A. Our Tacoma office, 666
yes.

Q. Coming back again to the question of rebates, can you give us any idea of about the amount of rebates per year that are paid to the other shippers that you have mentioned, by the conference? A. I could not; it is a very varying figure.

Q. You mean as to each? A. Yes, one year as a merchant I would do a big business; another year I may do a very small business. My rebates one year would be very important; another year of no value at all, and so it would be.

Q. You say you consult these various shippers, most of 667
whom you say were also steamship agents? A. Yes.

Q. Then, as steamship agents, and as shippers, you make the change in the tariff? A. We discuss any changes.

Q. You discuss the changes? A. Yes.

Q. And if a change was decided upon, who made it? A. It would be made in Hong Kong.

Q. That is by the same people that you have mentioned? A. Yes, by the committee in Hong Kong.

Q. So that you were looking at the question of rates from two standpoints? A. Quite so.

Q. One as an agent representing the owner, and the other 668
as a shipper? A. That is exactly so.

Q. And your purpose was to have the rates so that the owner would be satisfied, and at the same time a rate that you as the shipper would be satisfied with; is that the idea? A. That was the idea.

Q. And I suppose your purpose was to put the rate so that it was not so high that it would invite outside competition? A. To put it so that the trade should be increased.

669 Q. But in addition to that you were careful, were you not, to see that it was not put at such a price that it would invite outside competition? A. The moment we get the rate beyond a certain figure we come up against the open market; the freight market of the world; that is, the tramp; we come against that, and therefore we cannot go beyond a certain figure.

Q. You have already testified, Mr. Dodwell, that there were only about six independent tramp sailings a year? A. Between 1891 and 1904.

Q. After 1904 how many tramp sailings were there? A.
670 There are far more tramp sailings now than there were; far more tramp sailings come out to the Far East than used to come out.

Q. To what ports? A. All over; the ports of China, Japan, and Corea.

Q. Were they being offered a berth there for cargoes for the United States? A. They would have been if it had been worth their while.

Q. In other words— A. They were always there available to keep us in order, from making too high rates.

671 Q. Then, as I say, you were careful to have your rates at such a figure that competition would not be invited because of it, is that right? A. Exactly.

Q. You were not party, I suppose, or privy to the books of any of these steamship companies, were you? A. No.

Q. And you were not consulted by any of them in the European conference in establishing a tariff at any time, were you? A. Oh, no, certainly not.

Q. As I understand it when this agreement was originally formed in 1904, you used the European tariff as a sort of a standard? A. Possibly so, yes; I think it is very likely that
672 we did.

Q. And at that time you had no intercourse with the steamship companies that were party to that conference agreement, whose tariff you used? A. None whatever.

Q. Your knowledge of the rates as to how they were made up, the sources, that is to say the cost of doing business of each particular line, you have no individual knowledge of, I suppose? A. I have a good deal.

Q. For instance, take the Hamburg-American Line, have

you ever gone over their books? A. I have seen the published account, that is all I could say. I would not like to criticize the Hamburg-American about that. 673

Q. You have seen their published balance sheet; that is all, is it not? A. Yes.

Q. That is true of all these lines? A. Yes, that is true of all of them.

Q. The accuracy of them, or what charge was made for certain things, you have no means of knowing? A. I think I have; I think the accounts will show.

Q. They show profit and losses, and charges for depreciation? A. Yes. 674

Q. And beyond that you have no knowledge; it is pure hearsay, is it not? A. If I am a shareholder, I do not take it as hearsay.

Q. Are you a shareholder in the Hamburg? A. No, but of some others.

Q. In what other lines are you a shareholder? A. I have mentioned them.

Q. Are you a shareholder in the Union Steamship Company? A. No, sir; I am very glad that I am not.

Q. Are you a shareholder of T. B. Royden? A. I am not.

Q. But you are a shareholder in Dodwell & Company? A. Yes, in Dodwell & Company I am. 675

Q. And are you a shareholder in the Shewan, Tomes & Co. Line? A. No.

Q. You say you are a shareholder in the Indra Line? A. Not in the Indra Line, no.

Q. And you are not a shareholder in the Anglo-American Oil Company? A. I am not; in James Chambers & Co.; in John Warrack & Co., in Barber & Co.'s steamers, I am.

Q. And those are the only ones of this conference that you are interested in? A. Yes; those three. 676

Q. The European conference, whose schedule you say, or tariff, you used as a basis, is composed of many other lines? A. A great many.

Q. You were not a shareholder in any of those lines, were you? A. One.

Q. Which one? A. The China Mutual Steamship Company.

Q. Any others? A. That is all.

677 Q. What other large lines were interested in that conference? A. In the European?

Q. Yes? A. The Hamburg-American; the Messageries Maritimes, a French Line, and the P. & O.

Q. What is that? A. Peninsula & Oriental Steamship Company.

Q. That is one of the largest? A. One of the very big ones; it includes the Austrian and the Italian, and pretty near every European nation that has got any maritime fleet.

Q. You have no personal knowledge of how the affairs are managed of any of those, have you? A. Personal knowledge,
678 Mr. Baldwin? No. I have no personal knowledge.

Q. And with reference to the lines that you are interested in outside the Dodwell Line, your personal knowledge is confined to the statements of balance sheets that are distributed among the stockholders; is that right? A. I get from other inside sources, what information I want; whatever I want, I will have given to me.

Q. With the exception of those in which you have this personal interest, you have no personal knowledge about their business at all, have you? A. No.

679 Q. After this conference was formed in 1904, you say that there were more tramp steamers often on the berth? A. More steamers came out to the Far East.

Q. That is, they were at some place in the Orient where they could have been available? A. Yes, they were.

Q. I understand you to say the value of tramp tonnage has gone up all over the world? A. Yes.

Q. Is it not a fact that the amount of tonnage, the amount of business all over the world for which tonnage is required has increased very materially? A. In the last few years.

Q. So that not only in these particular ports that you
680 are interested in, but in all ports of the Orient, there is a greater demand for tonnage? A. Yes.

Q. And has been? A. Yes.

Q. About what time was it that the suggestion came for this pooling agreement? A. About six months after we started the first agreement of July, 1904.

Q. And its purpose was what; what was the object of having the pool? A. To equalize the earnings and the expenses of steamers. In these first six months it had been found by

practical working, that the owners who received only what they earned from the freight, naturally were picking and choosing all the best; they wanted all the best cargo, they wanted to load out all of the biggest ports, where there would be the very least delay. They did not want to go to the smaller ports where they would get very little cargo, and where their expenses would be so largely increased through calling; and in addition, they did not want to sail from the last loading port, until their ships were quite full. These are the principal difficulties which they had to get over, and it was for that reason that I pressed the owners in the conference to adopt some method of pooling which would equalize these differences, so that every owner would have to carry the good and the bad cargo, and call at whatever ports the conference decided it was best that his steamer would call at. There would be no picking and choosing of cargo, and no picking or choosing of ports of call. Since the pool was formed— 681 682

Q. I am not asking you about since the pool; I am asking you now what was your reason for forming it? A. That was it.

Q. That is what was in your mind, was it? A. That is what was in our minds. 683

Q. Who drew up the pooling agreement? A. There was a committee of owners, and Mr. Dermer, my partner, attended every meeting and assisted.

Q. That does not answer my question; who drew it up; was it drawn up by some person representing the conference? A. It was drawn up by the committee of owners interested in the conference in London.

Q. And submitted to you before it was drawn up,—I mean after it was drawn up? A. I saw it from time to time in the course of its preparation. 684

Q. And you were familiar with its provisions? A. Yes, I was familiar with its provisions.

Q. I noticed, Mr. Dodwell, that the reason given for the formation of the pooling agreement is different; for instance, it says in Exhibit 3 of the petition, "In order to consolidate the position of the associated lines and to provide a method of meeting outside opposition that may be effective." Is that one reason? A. Yes, that was one reason.

685 Q. You did not mention that in the reason that you gave to Mr. Kirlin, just now? A. I haven't mentioned it, but it was naturally one.

Q. The impression I got from your evidence was that the sole reason is that they thought it was unfair that certain of the owners should have a pick of either cargo or port? A. Yes.

Q. And others would get the small end of it, and consequently you considered it advisable that they should arrange so that the vessels of one owner who happened to get the small end of it would be reimbursed from the total results;
686 is that the idea? A. Generally speaking that was the idea. I shouldn't have tried to keep back anything, Mr. Baldwin, seeing that it is all printed.

Q. One of the reasons you had in your mind and that you formulated in the agreement was— A. You have it on record; it is printed; it must be one of the reasons, certainly. I admit it was one of the reasons, to meet competition that might come forward.

Q. Your theory was that if you arranged this pool that the outsiders you spoke of would be eliminated? A. Yes.

687 Q. Any other persons who might enter into the business, would have to meet that condition? A. Yes.

Q. So that this pooling agreement put you in a very much stronger position, because it would tend to eliminate that competition, among other things? A. It would.

Q. And it did, didn't it? A. It did, as a matter of fact.

Q. You testified that when merchants would come to you and point out that the rate was too high, you would immediately try to modify it and bring it down to a point where they were satisfied? A. Yes.

Q. Do you refer to these merchants whose names you have
688 given and who were more or less tied up with the ship owners? A. I have a very distinct recollection of a meeting held in our London office, at which I was present, when these Manila firms' representatives came to us with regard to a proposal we had made to them for raising rates; and also for having a condition for the carriage of hemp changed more in favor of the steamers.

Q. That is not quite responsive to my question? A. At this meeting—

MR. KIRLIN: Let him finish. 689

THE WITNESS: I want to show you one thing that I can speak of, Mr. Baldwin.

Q. Mr. Dodwell, you have a very good lawyer here that can bring out all these questions on the re-cross examination; if you will do me the favor of confining yourself to my questions and making your answers as responsive as possible to my questions, we won't have these little flurries. The question is, you testified that when merchants would come to you and point out that the rate was too high, you would immediately try to modify it and bring it down where they 690 were satisfied. Do you refer to these merchants whose names you have given and who were more or less tied up with the ship owners; you can answer that by yes or no; I do not care for the circumstances of it, or what was said? A. There have been other merchants than those referred to, who have come to us and who have had their recommendations considered, besides those, but generally they would come to us from the people—

Q. That you have mentioned? A. Yes, that I have mentioned, who were dual agents, for the steamers and for themselves also. 691

Q. That is to say, a complaint would be made practically by one to himself, that the rate was too high; is that it; as a shipper, he would make the complaint to himself as a representative of the owner, that the rate was too high, and then this matter would be brought up in conference, and you would arrange for it? A. It might come from the men inside the conference, or from some outsider.

Q. Are there many instances in which you reduced the rates under such complaints? A. I could not say.

Q. Did it occur often that complaints of that kind were made? A. No; it did not occur often. 692

Q. Have you now any particular recollection of any one person not identified with the steamship interests who made such complaints? A. Some firms in Japan made complaints.

Q. Who were they? A. Rasbe & Co., in regard to the carriage of ores.

Q. That is low class freight, is it not? A. Yes; I cannot remember the names of these people, Mr. Baldwin, unfortunately.

693 Q. I do not expect you to do so? A. But there have been one or two like that; all these cases have been considered; if possible the rate has been lowered.

Q. Wherever it was possible it was lowered? A. Where it could be done it was done.

Q. But very few applications of that kind were made by others than this group of merchants that you have menti ed? A. Very few would come from outside.

Q. Mr. Dodwell, can you state approximately what per cent. of the cargoes shipped by the various lines, is shipped by these same merchants who are also agents of the lines?
694 A. I have already said that I think it is about 50 per cent., perhaps; perhaps a little more.

Q. I did not recall that I had asked you that question? A. Yes, you suggested 70 per cent., if you will remember.

Q. Yes, you are quite right; your commission as agent for the steamship lines that you represent, is a fixed commission, is it not? A. 5 per cent.

Q. And that did not vary, whether the rates were high or low? A. It did not vary.

Q. With reference to this additional 5 per cent., that was
695 given to these favored shippers, you stated that you considered that the only blot on the procedure of the conference? A. Yes.

MR. KIRLIN: 5 per cent. at Singapore?
THE WITNESS: Yes, at Singapore.

Q. The blot was, you say, because it discriminated against the other merchants? A. Yes.

Q. The only difference between this additional 5 per cent. commission or rebate differing from the public or the offered rate to every person who would confine all his shipments to
696 your line was that it was secret for a long time at least? A. It was secret, but everybody knew of it.

MR. KIRLIN: It was additional.
MR. BALDWIN: I said additional.

Q. There were men who availed themselves of the ordinary 10 per cent. rebate that was allowed to all shippers when they confined all their shipments to that line? A. Yes.

Q. But the agreement with them was one that was not

made public? A. It was not published in the same way as the others were, certainly not. 697

Q. You say it was known to everybody that these particular firms got it, how much they got? A. How much?

Q. Yes. A. I don't know whether the amount was known; the 5 per cent. was known, that they were getting an extra 5 per cent.

Q. How long do you think it had been known before the Straits government got busy on it? A. Five years or four years; four years I should say.

Q. Did they get the 5 per cent. on all the shipments, or simply those going in certain ships? A. They got the 5 per 698 cent. on all conference shipments out of Singapore and Penang.

Q. Mr. Dodwell, upon what was this 5 per cent. allowed; on their own shipments only, or 5 per cent. of all the shipments made by the conference? A. All the shipments from Penang and Singapore.

Q. Whether their own merchandise or the merchandise of anybody else? A. Anybody's.

Q. Mr. Dodwell, with reference to the extension of the service under the conference, do you mean to be understood that in these ports which theretofore had only been served 699 in a very desultory way, because of the conference and the sending of boats at the particular times, was the sole cause of the enlargement of their business? A. No.

Q. Or the business of the shippers? A. No, I do not say it was the sole cause.

Q. You only mean it was one of the contributory causes? A. It contributed to it.

Q. As a matter of fact, the export business of all those countries out there, and the islands, etc., has been increased very materially? A. Yes.

Q. Particularly in the last three or four years? A. Yes; 700 and I attribute it very largely to the facilities; not simply the shipping facilities, but the banking facilities and other facilities.

Q. The general awakening of all the commercial activities of those people? A. Yes, and the general opening up of the countries, yes.

Q. A good deal of it was due, was it not, to the building of railroads in the various countries out there, particularly

701 in China and Manchuria, and in the development of Japan; in fact, all those countries? A. It would affect all those countries; the building of railroads would help materially in the development.

Q. The general increased activity of Japan influenced and augmented the business of all the contiguous countries, did it not? A. Yes.

Q. During the same period? A. During the same period, yes.

Q. You testified on your cross-examination the size and the general quality of the conference steamers had been bet-
702 ter since this conference? A. Yes, it has been better; they have been better.

Q. That is true, generally speaking, is it not, of all the lines? A. Of all the regular lines, yes.

Q. All over the world? A. All over the world.

Q. And even the size and the quality of the tramps have been better, too, in recent years? A. Yes, they have been better.

Q. They are very much larger than they used to be, are they not? A. Yes, they are very much larger now than they used to be.

703 Q. Tramps that have been built in the last half dozen years or so, are very much improved over what they were before? A. Yes, undoubtedly.

Q. So that the betterment of the shipping facilities, at least so far as the quality of vessels engaged in export trade in those countries is concerned, has not been due to the conference, but it has been world-wide, has it not? A. It has been world-wide, yes.

Q. The speed of all these steamers, the more recent construction, whether tramp or belonging to the regular lines,
704 has also been increased, has it not? A. I do not agree about that; the regular lines have increased their speed; the tramps have not. That is the great drawback of the tramp.

Q. Wasn't there a strong contention made by the governor of the Malay Straits that the increase in size and speed was not confined to the conference steamers, but that the size and speed was general in all boats of more recent construction, whether the tramp steamers or any other? A. You could not accept the governor of the Straits as an authority on shipping.

Q. You remember this evidence given before the Royal Commission? A. I do not remember the governor giving any evidence. 705

Q. You remember his testimony was taken in some form before that commission in which you testified with reference to these conference agreements, you remember that, don't you? A. I didn't know that he had been a witness; his evidence may have been taken.

Q. If you do not remember it, that is all there is to it? A. I do not remember his being a witness.

Q. I notice that under the provisions of Exhibit 3 attached to the petition is a limitation in the size of the steamers; do you remember that? Yes. 706

Q. Why was that limitation put on there; what I refer to is this: "Unless otherwise mutually agreed the limit of size of steamers employed either eastward or westward shall be 10,300 tons of 40 cubic feet bale space"? A. Yes.

Q. Why was that limitation put on there? A. To prevent owners putting in a steamer of 15,000 tons as a sailing. You had to limit the size of those sailings.

Q. The possibility of a larger steamer being able to do the business at a much less cost because of its size, was prohibited by this agreement? A. On the contrary, the idea was not to prohibit the bigger steamer for more economical working; but to have steamers at a uniform size, and send them along regularly, and not have one big one which would take so much more time to load, and delay all the other boats behind. 707

Q. Why was it that the steamers already in existence, belonging to the conference that exceeded that amount, still ran? A. I do not think the steamers that we had exceeded that limit.

Q. It says here, "But steamers which may have been regularly running in the trade for one voyage, or more, or who are now loading, are to be admitted to the pool, even though in excess of the limit above"? A. It was some very small excess, that is all. 708

Q. Was not one of the reasons why the amount of the tonnage for any one steamship should not be increased, due to the fact that a number of the conference lines had very much smaller steamers, and that it was for their interest and for

709 the interest of the owners that they should be continued in the service, and they did not want their service to be eliminated; wasn't that one of the reasons? A. I should not look upon that as the reason at all; some of the steamers that were running were small, and were being gradually replaced by larger boats.

Q. But they continued to run them a long time, and some are still in the service? A. Some are comparatively small; 7,000 or 8,000 tons.

Q. And are still running? A. And are still running, yes.

Q. Mr. Dodwell, the eastward agreement, Exhibit 1, was
710 executed on the same day, wasn't it? A. I have no knowledge of that; we are not signatories; we are not interested.

MR. BURLINGHAM: You mean the same as the westward or the pooling agreement?

MR. BALDWIN: The same as the westward agreement.

Q. And all executed the same place, were they not? A. I have never seen it. I don't know at all; I was not present.

Q. Mr. Dodwell, was the ratio of the increase of trade
711 from Singapore, greater after the conference than it was before? A. I believe it was; I cannot say for certain.

Q. You have no real knowledge about that, have you, Mr. Dodwell? A. The ratio?

Q. Yes. A. No.

Q. Mr. Dodwell, what was the practice of the conference in the event that a consignee had any claim for damages of any kind? A. I have not been here present so that I cannot say what the practice was.

Q. Don't you know it to be a fact, that if a consignee had any claim for damages for any reason, to his shipments, that
712 even when he made his complaint direct to the line that shipped it, it was all turned over to the conference, and decided by the conference how much should be allowed, if anything should be allowed? A. I think that applied only to very large claims; not to ordinary claims.

Q. You are sure of that?

MR. SPOONER: He said he thought that was it.

A. It would be so unbusinesslike.

Q. I am asking you if you know, if you have any knowl-

edge? A. I know that claims from time to time were referred to the committee in London; claims that were made by consignees. 713

Q. Was it the habitual practice to do that? A. Oh, no.

Q. You testified Friday, Mr. Dodwell, with reference to the Manila merchants, to this effect, you said: "When the tariff was established finally from the Philippine Islands, it was in consequence of some of the big shippers in Manila coming to us in London and saying, 'Why don't you extend the conference to Manila?'" You remember that, don't you? A. Yes.

Q. Who were those shippers? A. Smith, Bell & Co., Ker & Co., Stevenson. 714

Q. They were all agents of these lines in Manila, weren't they? A. No, Ker & Co. were not.

Q. Smith, Bell & Co. were? A. Yes.

Q. And Stevenson & Co. were? A. That is right, yes.

Q. Was that a joint request of theirs, or did they make it individually? A. I think they had indicated to us previously individually that they would like to arrange this, and then they met collectively to discuss the thing.

Q. And formulated a request collectively? A. Yes.

Q. Do you remember when the American & Oriental Line came into the conference? A. In December, 1904. 715

Q. Between July, 1904, and December, 1904, had you been having sufficient sailings to supply the trade? A. Quite.

Q. And you increased the sailings then when the American & Oriental Line came in? A. Yes, we did.

Q. If you were supplying all the requisites of the trade with reference to sailings prior to that time, what was the necessity of increasing the number of sailings, when the American & Oriental Line came in? A. They were supplying the Straits at the time they were opposing us, largely to Singapore and Penang. 716

Q. They were supplying them? A. They were supplying them; the shippers there, with tonnage, in opposition to us, taking our cargo which afterwards we got into the conference when they came in.

Q. What about the period between July and December, 1904? A. The increase referred to between those two months is paper simply. I have tried to explain it before. We

717 started in the first agreement,—the first agreement of 1904, with 46, and then again it was 46. There is no increase in the sailings that we were providing. They came in, and we simply joined them in with us, and then this business which they had been getting in opposition, came into the conference, later on.

Q. Mr. Dodwell, among other reasons that you stated that induced this pooling agreement was to enable the ships of the conference lines to go to more ports than they had theretofore served; you remember that, don't you? A. Yes.

Q. The same provision that is in the eastward pooling
718 agreement is also in the westward agreement, isn't it? A. I haven't seen the eastward agreement; I never have read it; I have never seen it. I cannot tell you about the eastward agreement. I would, if I could, but I don't know anything about it.

Q. Coming down again to the class of cargo, you said that all the lines hesitated to carry the poor class of cargo for the reasons that you have mentioned? A. Yes.

Q. Due to the fact of these various things, such as leakage and stowage and all those various considerations? A. Yes.

719 Q. But of course you held yourselves out as carriers to take whatever was offered in that class, didn't you? A. In China, Mr. Baldwin, we do not consider ourselves common carriers; we are not common carriers; under the British law, steamers are not common carriers.

Q. You are carriers for hire, are you not? A. Yes, but we are not bound to carry anything that is tendered to us; an owner may pick and choose what cargo he will carry.

Q. Did you then make it a matter of practice to discriminate against shippers who had that class of commodity, be-
720 cause of your interpretation of the British law? A. We made a practice of getting the best cargo we could, for the ships which we were loading.

Q. Did you make it a point of refusing this class of cargo that you say was undesirable? A. We were only carrying it when we could not help ourselves.

Q. In other words, when you didn't have enough tonnage to fill your boats? A. When we wanted it to fill up, we would carry it then.

Q. What became of that class of cargo; what became of it? A. It was not shipped. 721

Q. By anybody? A. It was not shipped; it did not go forward.

Q. It did not even go by tramp? A. It did not even go by tramp, no.

Q. You said a large amount of that tonnage was available all over the East, because of certain classes of cargo they got eastward from America and continental ports; you remember that, don't you? A. Yes; yes.

Q. And that usually they would make a rate satisfactory to themselves outward? A. Yes. 722

Q. And take anything they could get to go back with; that is about it, isn't it? A. When they could not load at the rice ports in the season, or at the sugar ports in the season.

Q. Then what? A. If they were out of season they would take what they could get.

Q. What is the sugar season and what is the rice season? A. I don't know the month; I could not tell you the month.

Q. Are they the same, the rice and the sugar season? A. I could not tell you that.

Q. What are the rice ports and what are the sugar ports? 723
A. The rice ports are Sagon, Bangkok, Rangoon.

Q. And the sugar ports? A. The sugar ports are Java; the ports of Java.

Q. None of these ports, then, which are directly connected with the conference lines business, embrace any of these sugar or rice ports, is that right? A. Other conferences do.

Q. I am speaking about this conference? A. No; the New York conference does not include any of those ports.

Q. Where is the point of export of this peculiar kind of inferior rubber that you speak of? A. The Straits; Singapore, Penang. 724

Q. Then the shipper whose business it was to handle that kind of commodity, was entirely at the mercy of these respective conference lines as to whether or not they would take his cargo? A. Unless they could get the opposition to carry it.

Q. In the period which is not the rice period or the sugar period, there would not be any, would there? A. That is so.

725 Q. The only time that tramp steamers would be available for any class of commodity, then, would be the period when they were coming out eastward, loaded out eastward, and then could take a sugar cargo or rice cargo back? A. Yes.

Q. And about how many months of the year would that comprise? A. About six.

Q. And during the other six months, then, the shipper of these poor products that you call undesirable, would be entirely at the mercy of the conference lines, whether they would take his products, or not? A. Yes.

Q. A lot of that stuff comes to the United States, does it
726 not? A. I believe it does.

Q. Particularly the rubber produce? A. The jelutong, yes.

MR. KIRLIN: I think the witness is talking about ante-pooling days.

Q. Mr. Dodwell, since the pooling arrangement was made, that class of cargo, such as rubber you speak of,— A. Jelutong.

Q. And the other class of undesirable product? A. Gambia.

Q. Shippers of that class of product could only get their
727 shipments taken by the conference lines, providing the conference line sailings did not have enough cargo of a better class? A. That is before the pooling; not since the pooling.

Q. That is not since the pooling? A. No, since the pooling everything has been carried.

Q. Regardless? A. Absolutely regardless, yes; it was only prior to that, that that condition existed.

Q. Before the pooling, tramp steamers were in the berth all the time, were they not? A. Not all the time, no.

Q. At least one a month? A. I doubt it; I do not think so.

Q. Did Royden take it? A. Yes, he had to carry it.

728 Q. And he had twelve steamers a year, didn't he? A. No; no, he did not have twelve, not as many as twelve.

Q. You testified, I believe, on your cross-examination— A. All of those twelve were not available to carry gambia or jelutong; they would not all want to go to Singapore to carry the worst cargo that there was.

Q. But they were all available for whatever cargo might be offered? A. Of course they were.

Q. And at the same time the conference steamers were there; I mean to say, those that you call the regular lines? A. Yes. 729

Q. And the tramp steamers; so that you had on the berth there all the time the tramp steamers more or less? A. Yes.

Q. And the Royden steamers? A. Yes.

Q. And these regular lines that you have testified about? A. Yes.

Q. So that as far as the amount of the cargo that was offered regardless of its quality, there was always ample space there for that, is that the idea? A. I doubt whether there was ample space there; I think they had great difficulty during the competition in getting all their nasty cargo carried forward. 730

Q. Because of the fact that the high class cargo was in such quantities that all the ships were filled? A. On the contrary, because the owners did not like to carry the bad cargo.

Q. Then it was not due to the fact that there was not available space there? A. Very likely there was space, but they did not want to carry it; they did not like to carry it.

Q. It was not due to the fact that there was not available space, but because the owners did not want to take it, that was the reason? A. Yes, that was the reason. 731

Q. When the conference was formed you changed all that, did you? A. We did; when the pooling was formed.

Q. And one of the reasons was, because it became necessary to take care of it; otherwise you would have competitors in there, and they would? A. Yes; the nucleus for competition.

Q. You did not consider since the conference was formed, that you were at all obliged to take all the lower class cargo? A. Absolutely obliged.

Q. You are now? A. Absolutely; one of the conditions was that we should find all the tonnage that was needed, that the trade required. 732

Q. But you did not consider as far as the law has been changed, as a carrier, that you could refuse to take it if you wished? A. We have not refused to carry it since.

Q. That does not answer my question; the reason for your saying that you are obliged to take it, is not because the law

733 has changed, but simply because your agreement changes? A. We promised to carry it, so that we do carry it.

Q. Your promise is between yourselves and not with the public, is it? A. Between the shippers and the ship owners.

Q. Do you mean to say that this pooling agreement is an agreement between the shippers and the ship owners? A. The pooling agreement is not an agreement between the shippers.

Q. What is the original agreement? A. Between the ship owners purely, the pooling.

Q. What is the other? A. The other is for the ship owners entirely.

734 Q. You don't want to be understood here, Mr. Dodwell, to say on the record, that these agreements for the eastward and westward traffic are agreements by which the shippers became a party, do you? A. They are not a party to it; we as merchants, got it up; we initiated the thing.

Q. Did you sign it as shippers, or did you sign it as representatives of owners? A. We signed the agreement there as representing certain owners.

Q. And it is an agreement between owners as such, is it not? A. Yes.

Q. Coming back to my original question? A. Yes.

735 Q. The law does not make it any more obligatory upon the owners to carry undesirable cargo than it did before, does it? A. Certainly not.

Q. And the only way you are obliged to carry the undesirable cargo is because the owners agreed that they would? A. That is so.

MR. KIRLIN: They agreed with the shippers that they would.

Q. I wish you would take that agreement, Mr. Dodwell,

736 and spell out that provision; I would like to see it.

MR. KIRLIN: He did not say it was in that agreement.

Q. Mr. Dodwell, you have already testified that you made no agreement with the shippers; you simply offered them a rebate, provided that they confined themselves to certain conditions in the circular that you sent them, that is right, isn't it? A. Yes.

Q. And that so far as your method of doing business is concerned, between owners, you have never taken the shippers in as a party to the agreement, have you? A. They are not a party to the agreement. 787

Q. And up until the time that the shippers sent their commodities and they have been carried, you testified that they had no claim for the rebate until the carrier had performed his part by carrying, is that right; you have so testified, haven't you? A. That is so.

Q. So that again, any obligation between you as an owner and a shipper, to carry undesirable cargo, has not changed in the slightest, has it? A. There is no agreement. 738

Q. The obligation to carry everything that is offered— A. (Interrupting.) Yes.

Q. Is due entirely to the agreement of the owners? A. Under pressure from the merchants.

Q. I did not ask you that; you understand the value, the terms of a contract, do you not? A. I do.

Q. You know, don't you, as you have testified, that you had no agreement with the shippers at all? A. None whatever.

Q. So regardless of the inducement or the pressure, the reason of carrying that cargo, regardless of its class, grows out of the agreement that the owners made among themselves? A. That is so. 739

Q. Can you turn, Mr. Dodwell, to any one of the agreements that you have put in evidence, or set forth in the petition, where there is anything that requires the owners, or any of the conference lines, to carry all cargo, regardless of the quality? A. There is no clause there; there is an unwritten understanding.

Q. But you never embodied it in any formal agreement, did you? A. No; and under such unwritten understanding, it has been shown that tonnage has been provided as required, whether it has suited the conference or not. 740

Q. How was that arranged? A. By chartering extra boats.

Q. You say an unwritten understanding? A. Yes, an unwritten understanding.

Q. That you would do it? A. That we would do it, yes.

Q. Then it grew out of the agreement mind of the confer-

741 ence agents in the East, to do it for their own particular advantage, and primarily to see that it was done, so that there would be no invitation for the outside competition? A. Precisely.

Q. Mr. Dodwell, you testified on Friday, that the fast vessels of the conference got a premium? A. They got a lower rate of premium than the tramp steamers would get; you are referring to the steaming?

Q. Yes. A. They got a premium for speed.

Q. That is true everywhere where there were conferences, that because of speed they get a better rate of premium? A.
742 I think it is purely a pooling agreement; I do not know what others do; I have never seen another one.

Q. Doesn't the concession grow out of the fact that because of their increased speed, the cost of hauling was greater, and, therefore, in making up this pooling agreement, they should be given an allowance for that? A. Yes; it is a reasonable thing to do.

Q. Isn't it generally? A. I don't know; I have never seen another pooling agreement.

Q. The faster steamer would hardly be in a position to
743 carry this business with advantage against a slow steamer, unless some such compensation were paid, would it? A. That is right.

Q. Then, in making up this pooling agreement, in order that such conditions of earning power should be compensated for in some way, these different premium rates were fixed? A. Yes.

Q. And in order that there would be no inducement for any person protected by the agreement to have a larger ship to cut loose from it; is that the idea? A. That has nothing to do with; it is purely to increase the speed; to offer inducements to owners to build steamers with greater speed.
744

Q. When you made up the agreement, there were a number of steamers faster than others, were there not? A. Yes.

Q. And it became necessary to make some provision by which they were induced to remain in the pool; when the pool would be fixed and established? A. Yes.

Q. In other words, that all these differentiations should be provided for, otherwise the conference would not hold together? A. Quite so.

Q. Coming down, Mr. Dodwell, to the question of comparison of rates, the only ones that you have given here are the sugar rates from Java, and what was the other; or was there another? A. I do not think I gave any other. I gave the Saigon Rice Line. 745

Q. Where did you get the information from as to the sugar rates? A. Glover Brothers of London.

Q. Not from any first hand knowledge of your own as to those rates? A. It is common knowledge.

Q. You yourself had no first hand knowledge of what the rates were and the fluctuations, did you? A. I do not keep the record. 746

Q. You simply went to some person who would keep a record, to some person in London, and asked him what their rates were, and they gave them to you? A. Yes, the most reputable people I could go to.

Q. As far as the accuracy of those rates go, you don't know yourself, do you? A. I am satisfied that my information was correct.

Q. You have no primary knowledge of those rates yourself, have you? A. I have not.

Q. And the accuracy of the statements made to you, that is, whether or not somebody in the employ of these people had made the proper compilation, you don't know, do you? A. No. 747

Q. You just took it as it was offered to you? A. I don't know it personally.

Q. Isn't there any peculiarity of the sugar business that determines the rate for hauling, or conditions from the class of business that is done in the Orient by these conference lines? A. I do not understand you, Mr. Baldwin.

Q. Does not the rate with reference to sugar in Java, depend on conditions that are not precisely the same as rates established for other kinds of cargo in the Orient? A. The sugar trade is a bulk trade. 248

Q. Entirely? A. Almost entirely, just in full cargoes; the China trade, the Manila trade, the Straits trade and the Japan trade is done in parcels; small parcels.

Q. The bulk trade is usually by charter, isn't it? A. It is all chartered.

Q. And you said it is entirely carried on by these tramp

749 steamers that make a business of going outward at times of the year to get sugar cargoes in? A. I imagine so.

Q. The conditions of stowing, and the handling of the sugar trade in bulk, is essentially different than the stowing and the handling of the trade with reference to the cargo that goes out in parcels, is it not? A. It is.

Q. So that even the Java trade, the sugar trade, is by no means a fair comparison for the purpose of establishing whether one rate is reasonable as compared with another rate out to that point, is it? A. It is the only one I can give you.

750 Q. It has certain inherent characteristics that are entirely different from this parcel trade, with the China and Japan trade, has it not? A. Yes.

Q. The method of loading these tramp steamers coming in the season like that is entirely different from the loading of your regular steamers at your regular ports, isn't it? A. I believe so.

Q. You have, I suppose, in your steamers, a systematized method of doing all that? A. Yes.

Q. The loading of tramp steamers, and particularly at
751 ports in Java is not systematized in the same way, because it is desultory; is that right? A. It is systematized, certainly; it is systematized, it is a big trade.

Q. Not systematized in that sense? A. It is a big trade.

Q. It is not systematized in the sense of the regular trade carried on every day and every week and every month by regular lines, is it? A. No.

Q. You do not really contend, do you, that the Java rates are a fair comparison to establish whether your rates are reasonable or not, do you? A. We take the Java's rates in trying to fix our sugar rates.

752 Q. That is the only one? A. That corresponds exactly, excepting the Java is full cargo, and the Philippines parcels.

Q. Then, in your testimony on that matter, you did not intend to mean, in answer to Mr. Kirlin's question, that the Java rates could be used as a comparison for the reasonableness of your broken cargo or package parcel cargo rates, in any other place in the Japan or China or Straits trade? A. I do contend that they should be taken as a fair comparison, a most fair comparison.

Q. Just state how the characteristics of the sugar trade, 753
which require charters for full cargoes, as a rule, with conditions entirely different than in the Orient, in your own line, where you load entirely or largely, at least, parcels, could be a fair comparison to determine the value of your own rates; just point out how two such classes of trade, so different in many of the essentials, could be a fair comparison? A. The steamer loading in Java takes out full cargo; she loads at a few ports, and discharges at a few ports; she receives a certain rate of freight on them. We have to load at a great many ports; our rate of freight as compared with theirs, the earnings we get out of the many ports we call at, 754
the many classes of cargo we carry, compares, in my opinion, most reasonably with the rates the tramp steamer gets for carrying sugar.

Q. How do you know, of your own knowledge, the cost of the tramp, to carry it on that trade? A. I can only presume; the tramp does not cost as much as the steamers which are engaged in our trade.

Q. But, on the contrary, you do know that it costs, as a rule, for a regular line, at least from regular ports, having its own agents and its own facilities, the cost is less in those ports to load, etc., than to a tramp steamer that goes in only 755
in the season and takes a whole cargo? A. On the contrary, if you are taking a full cargo you will have to pay less to the stevedores for loading and stowing that cargo, than we would have to pay to our stevedores.

Q. By comparing the rates of labor paid in one place and another? A. I know that the rate is less in Java than it is in China and Japan.

Q. How do you know that; have you been in Java? A. No, but I have seen many Java accounts, many shippers' accounts, where they show what the charges are; besides, there 756
are books published showing what the regular charges are.

Q. Have you looked up those for the purpose of making this statement? A. No; but I know it is less there than we have to pay.

Q. Referring to these tramp steamers that are engaged in the sugar trade, how do they go out originally; do they go out empty, or what? A. Many of them will go to Port Said with cargoes of coal, or they may carry cargoes of salt; they may carry out cargoes of phosphates, or other cargoes.

757 Q. To these points other than Java? A. Yes; and after discharging their cargo at destination they proceed to Java to load.

Q. So that for the purpose of their own profit, they have got to make a rate on sugar back that will, in a sense, compensate them to ports of their voyage to the eastward in which they really are going in ballast? A. That may be so, yes.

Q. Is it not also true that those commodities they take out that you have mentioned, bring a very low freight rate? A. They do, as a rule.

758 Q. That is another consideration for the owner of the tramp to take into account for getting the rate that he gets back for sugar? A. Certainly.

Q. Do you not know it to be a fact, Mr. Dodwell, that a good part of the eastward haul of all those tramp steamers engaged in the sugar trade, is in ballast? A. I should not think it is; I do not think that is correct; not a large part. A portion, yes.

Q. Don't you know that sometimes they actually go the whole distance outward in ballast? A. From where do you say, Mr. Baldwin?

759 Q. From any of the continental ports? A. I never heard of it; never in my life.

Q. Not even from ports in the Mediterranean? A. Port Said is one that I gave, yes.

Q. From Port Said, it is a common thing, is it not, for them to go the balance of the distance in ballast? A. No; occasionally, yes; they generally take a cargo out to India. maybe to Australia, or it may be to South Africa.

Q. As a usual practice there is a considerable distance that they have to make in ballast, to go to Java? A. That is

760 admitted and that all is taken into consideration in fixing the rate that they make back with the sugar cargo, is that not right? A. That is right.

Q. How about the business of the conference lines to the eastward; do they go out in ballast, or do they go out full, as a rule? A. They go out with cargo, mostly full, or nearly so.

Q. So that you have not got that situation to reckon with, of having a part of the one direction in ballast, and only hav-

ing full cargoes back; you haven't got that situation? A. We have not. 761

Q. As to these small ports, Mr. Dodwell, does your house have a branch at each one of them? A. No.

Q. Do the other conference lines have? A. Not necessarily.

Q. Can you mention any port where they do not have? A. Chefu, Tientsin, Dalny, Keelung, the Yang tse Kiang River ports, and several ports in Japan. Do you want me to give them?

Q. No. A. There are so many, Osaka, Nagasaki, there are a lot of them. There are only two main ports, Yokohama and Kobe, the others are subsidiary. 762

Q. Do you mean to say that none of these ports have both agents and merchants—general representatives? A. Maybe one here and there, but we are not generally represented in these ports.

Q. But at each one or other of these, merchants who are also shippers, owners, or representatives have more or less business, I suppose? A. That is so.

Q. Turning, now, to these ports, then, these smaller ports, in the itinerary that you say has been established, that is due to the fact that some one of the merchants who are also representatives of steamers have more or less business there? A. Not necessarily representatives of steamship lines; sometimes the application comes from a merchant direct. I know of applications having been made by merchants at Vladivostok and Chefu. 763

Q. As a rule? A. No. As a rule they come from the merchants.

Q. Not connected in any way with the steamship lines? A. Not steamship lines; sometimes the conference has representives at these places who represent it; they are their agents or sub-agents. The merchants will request that a steamer be sent there, because they can get together so much cargo; merchants, not necessarily the agents or the sub-agents. 764

Q. In a good many instances? A. In a good many instances, yes.

Q. Dalny is a large port, is it not? A. Yes.

Q. Who represents the conference lines in Dalny? A.

765 Mostly Japanese firms; Mitsui & Co., I believe, are the principal representatives there.

By Mr. Montgomery:

Q. Mr. Dodwell, who is the agent of your line at Chefu? A. Anz & Co.

Q. Who are they; shippers? A. They are shippers.

Q. And merchants, too? A. And merchants, yes. A German firm.

Q. And at the port of Tientsin? A. At Tientsin, Wilson & Co.

766 Q. And are they shippers? A. Merchants.

Q. They are merchants, you say? A. Yes.

Q. And at Keelung? A. At Keelung, Boyd & Co.

Q. And who are Boyd & Co.? A. Shippers of tea, principally.

Q. And also merchants? A. Yes.

Q. And at the Yang tse Kiang River ports? A. Various agencies; we have our firm at Hankau; at Kiukiang; I don't know who are our representatives.

Q. But these that you have named are large merchant firms? A. Yes.

767 Q. And they ship not only from these ports, but from other Oriental ports? A. Boyd & Co. are very large tea shippers from Formosa; Wilson & Co. are only in Tientsin; they are large shippers of produce to America; very large shippers.

Q. Do you know who the agents at Dalny for the other lines are, Mr. Dodwell? A. I could not say; I do not know them.

Q. Are they merchant firms? A. I do not think there are any but two merchant firms at Dalny.

Q. Would there be firms other than the agents at the other

768 ports? A. I think it must be so.

Q. There would not be any branch houses of yours? A. I don't know of any branch houses.

Q. There would be merchant firms additional to those? A. Merchant firms additional.

Q. And also at Tientsin? A. At Tientsin, also.

Q. Your line has its agency there? A. Yes.

Q. And Chefu? A. Chefu is a very small place; I think there are only one or two merchants there, all told.

Q. The Yang tse Kiang River ports? A. The same thing, 769
except Hankau; Hankau is an important place.

Q. And all the lines have agents there? A. Yes.

Q. And all those agents are merchants? A. All are merchants.

Q. You cannot remember the names of any except those? A. I think I have given all the names; Carlowitz & Co.; Arnhold, Karberg & Co.; Matheson & Co. have their own houses at Hankau.

Q. Each of them? A. Yes, each of them.

Q. How about the Japanese ports? A. You mean these subsidiary ports? 770

Q. Yes? A. I think the custom is to send some one to the subsidiary ports when a steamer calls there; to send some one there.

Q. You have no regular agent? A. No regular establishment there; it is the custom to send some one there; to some place like Shimidzu or Yokkaiichi.

Q. Is the American Trading Company an agent for one of these lines? A. I think the American Trading Company represent Weir's steamers; Weir's is one of the Houlder's owners.

Q. Can you think of any other large firms of merchants 771
that you have not named, as agents, that are agents for any of these lines anywhere? A. I may have forgotten; I cannot tell them at the moment.

Q. Who is your agent at Yokohama? A. Our own firm, and the others mostly the same.

Q. Why were not those put in the agreement, those Japanese ports? A. It was not known that there were shipments from them at the time the conference was adopted.

MR. KIRLIN: I think you have said that all the Japanese ports were subject to a Hong Kong conference? 772

THE WITNESS: Yes.

Q. These agents all get a 5 per cent. commission on outgoing shipments? A. Yes.

Q. And half of one per cent., is it, on incoming shipments? A. I could not tell you that; I could not tell you what it was on incoming shipments.

778 Q. What is yours? A. Ours is not a percentage at all, ours is a certain arrangement; they pay us so many cents per ton, or per hundred tons, discharged at the port.

By Mr. Baldwin:

Q. Mr. Dodwell, you say the new tariff went into effect in 1906, and it was arranged by the conference at Singapore; is that right? A. In 1906.

Q. In 1906? A. Presumably there would be a new tariff in 1904.

Q. You testified that a new tariff in 1906 was formed by
774 the Singapore committee; this was in response to a question put to you by Mr. Kirlin? A. That is right; in connection with Singapore.

Q. And you stated that the rates were suggested by various merchants? A. That is so.

Q. You mean the same large merchants that you have mentioned before, most of whom are owners or agents? A. Yes; I think by and by, when I send you a copy of that agreement, you will find attached to it a schedule of the rates which the merchants themselves proposed to have go into
775 effect.

Q. You are speaking now, of these same merchants? A. Yes.

Q. You are speaking of these larger merchants, most of whom are affiliated in some way with the steamship business? A. Yes.

Q. These rates were not suggested to you by the small merchants that you thought might be driven out by competition? A. No.

Q. Do you remember testifying on Friday to the effect that the benefits of the conference consisted of the method
776 of loading controlling the master over the disposition of cargo, etc.? A. Yes.

Q. How would the conference help the master in the method of stowing his cargo? A. By advising him in advance what sort of cargo he was likely to get at his later ports of call.

Q. When you say to enable him to stow his cargo better, it was simply this fore-knowledge that he would have, in order to make his loading at the first departing point; is

that the idea? A. Yes; the first and the second and the third and the fourth and the fifth, and so on. 777

Q. As far as the actual results were concerned, that was something that benefited entirely the owner, was it not? A. It did; and indirectly, the shipper also.

Q. But primarily, it is to the benefit of the owner, is it not? A. Certainly.

Q. I suppose if he knows that it is a certain cargo of a certain quality at a later port of departure, and that there is a certain quality of cargo at the initial point of departure, he makes allowance for it; is that the idea? A. He does; he tries to arrange his stowage. 778

MR. KIRLIN: He stows it so that the one would not damage the other?

THE WITNESS: Yes.

Q. Do you mean to say that that would be impossible without the conference? A. By no means.

Q. As a matter of fact, the method of stowing was precisely the same before the conference as it was after, was it not? A. On the contrary, the tramp steamers did not know what they were going to have.

Q. How about Dodwell & Co.? A. We knew what we were going to have, and we didn't take the bad stuff. 779

Q. How about Houlder & Co., this line that was taken in; the big line; have I got the name right? A. That is right; Houlders were the people who were taken in. I don't know about Houlders. I know that they were very dissatisfied.

Q. Do you mean to say that they did not conduct their business as well as your lines did? A. I do not think they did.

Q. That is an opinion of yours? A. I am certain they did not.

Q. In what respect? A. They did not understand the trade, and what was necessary to be done. 280

Q. Although they had been engaged in that trade for a great many years? A. They had not been engaged in the trade a great many years.

Q. It appears they must have been in the trade a great number of years in those ports, on your own testimony? A. I think not.

781 Q. How long was Houlder & Co. in there? A. Two or three years before they came into the conference.

Q. You mean to say that in that two or three years, that although they had been in the shipping business for a great many years, they did not understand how to handle that trade? A. I have no doubt that if Houlders could do it themselves they would know how to handle it. But they had to trust to anybody, or somebody else, who did not know the business.

Q. You mean that they did not have agents there? A. They did have agents there.

782 Q. Are they people who have had no experience in this kind of traffic? A. In my opinion, not sufficient experience.

Q. Not as much experience as yours, I suppose? A. Exactly; I think we have had more experience.

Q. But men who had some experience? A. Not much, in shipping.

Q. Wasn't the usual manner of the carrier companies in choosing their agents, to choose some very large merchant? A. Generally, it was.

Q. They did not look to the question so much of their actual experience, as steamship agents; but to the fact that 788 they are very large shippers, and therefore control a large business to go on those ships? A. Exactly; exactly.

Q. What other ports here in the United States that were opened up or made ports of discharge, after the conference that did not exist before? A. Boston became almost a regular port of call.

Q. You mean to say it was not a regular port of call before? A. On the contrary, I do not remember ever going to it.

Q. You are quite sure about that? A. I do not remember 784 going to it before the conference.

Q. So far as your own business was concerned? A. So far as our own business was concerned, yes.

Q. Did any of the other regular lines go there? A. I cannot answer for them.

Q. I am asking you about that? A. I don't know whether they went there.

Q. You don't know? A. I don't know whether they went there. I do not think they went there.

Q. What you mean to say is, so far as your business was concerned, it was not a point of discharge? A. That is so. 785

Q. What the tramps did, or what Dodwell & Co. did, you don't know? A. What Dodwell did, yes, I do know.

Q. During all that period of time? A. During the period that we did not go to Boston.

Q. I mean Houlder? A. What the others did, I don't know.

Q. Mr. Dodwell, you say this pooling agreement was first suggested by you? A. Yes.

Q. And that you made the suggestion primarily as a merchant? A. Yes. 786

Q. In what respect was your interest as a merchant in the division between the owners so that this inequality of either port or quality of cargo could be remedied; where did your interest lie in that as a merchant? A. To give opportunities to all shippers to have these cargoes go forward. If you wish to put it from a personal point of view we could not induce ships to take cargoes that we wanted to get forward.

Q. What per cent. of your business is this common cargo that you call undesirable? A. I could not say.

Q. Isn't your business largely in the higher class cargo? 787
A. Yes, it is; it is not so much in the smaller class.

Q. What ratio was your business in the low class cargo before the conference as compared with your business in the high class cargo? A. Very small.

Q. Although you were the agent for these lines, you testify, do you mean to say that before the conference you had difficulty in sending forward your low class cargoes? A. We did.

Q. Couldn't you send your cargoes by any other line? A. The business was often stopped, because of the inability to get freight, to get space in a steamer. 788

Q. You mean to say that there was so much higher class cargo that there was no room for the low class cargo? A. On the contrary, there was generally plenty of space; but the steamers would not carry this cargo if they could help it.

Q. Do you mean to say that they would go out light rather than take the low class cargo; is that the rule? A. They would go to Singapore finally to fill, having refused this low

789 class cargo in the north, and would have to take the low class cargo there or go short.

Q. Were you interested in low class cargo from Singapore? A. No.

Q. Where were you interested; in what particular ports, in forwarding the low class cargo? A. At Kobe.

Q. Is that all? A. Principally so.

Q. Would you say that your low class cargo was more than 5 per cent. of your general business? A. Probably not so much.

790 Q. And do you mean to say that that small interest was primarily the reason why you suggested this pooling? A. No, sir, certainly not; it was the request from other shippers; other merchants.

Q. You said in answer to Mr. Kirlin's question, that you made the suggestion primarily as merchants? A. Yes.

Q. As merchants, what was your interest in what some other merchant did as a merchant? A. As a merchant I represent other merchants. I want to see the trade increase; there was some business which I did, and some business which another merchant does. I do not pretend that we are

791 doing everything. There are some classes of cargo we deal largely in; some very little. Other merchants will deal largely in the other. It is my business, it should be my business to see all that business go through.

Q. Regardless of whether it is your business or not? A. Certainly.

Q. In other words, you have sort of a philanthropic interest in what the other merchants do? A. On the contrary, we want to see trade developed everywhere.

Q. As a merchant or as a ship owner? A. As a merchant.

Q. Again I call your attention to the fact that you stated

792 that your object in suggesting the pool was primarily that of a merchant? A. So it is.

Q. Give us some other reason as a merchant why you would be interested in the owners dividing up the differences in the result, because some would get the better class of cargo and some the poorer, and some would get the better ports; and some the poorer,—as a merchant? A. The more cargo that can be sent forward, the more sailings we will get; the better is the merchant's business, the better are the

facilities for them as merchants for doing business. Was it not common sense for us to try to push ship owners to carry all this common cargo as merchants, giving us the facilities, and more frequent sailings? 793

Q. You say that before the conference it was pretty hard to get space for your lower class of cargo? A. Exactly.

Q. And that the higher class cargo would always go out first? A. Yes; they would always take the higher class first.

Q. Up to that time, there was quite enough business, was there not, to keep the lines going on the higher class cargo? A. A few lines going, certainly; yes. 794

Q. As to the actual number of sailings, didn't it result that the aggregate would be about the same that all the lines had before the time of the pool, including Houlder? A. As a matter of fact, it exceeded.

Q. How many boats a year? A. Two or three.

Q. In the meantime all of the general average business had increased all over? A. For the first year, two or three; later on a big increase.

Q. Because the business had increased everywhere in all classes of business? A. I think because the facilities had increased far more than the business had. 795

Q. You have already disavowed any intention to attribute the increased business entirely to the increased facilities, haven't you? A. I think if you get 50 per cent. increase in carrying it is something to be proud of.

Q. In how many years? A. Five years.

Q. In that same period of five years had there been a general increase of at least 50 per cent. in the business of the Orient? A. No, sir, nothing like that in the exports.

Q. Before the pooling was there any schedule time of sailing? A. No, sir, no schedule time; no schedule of sailings. 796

Q. The particular lines made it a practice, did they not, of sending out their boats? A. At certain dates, and kept those schedules if they could.

Q. The arriving time would be, I suppose the same, wouldn't it; as many arrivals as before, I mean to say; your line would send out to the eastward just as many boats as they have since, practically, haven't they? A. Before the pooling?

797 Q. Yes. A. I think not.

Q. The number of boats that the regular lines sent out to the eastward, before the pooling agreement, was practically as many as they did the first year or two after that agreement? A. Yes, for a year or two.

Q. Those boats sailed on schedule from the Occident, didn't they? A. Prior to the conference?

Q. Yes. A. There was no schedule at all.

Q. I thought you said that the regular lines engaged in this traffic to and from these ports, regularly sailed; it was not desultory, like the tramp business? A. They were en-
798 gaged running to and fro the whole time; that is what we call the regular lines, not necessarily sailing every Saturday or every alternate Saturday.

Q. How regular were they before the agreement of 1904, the regular lines? A. They might sail within a week of the date they advertised.

Q. But the number of sailings a year would average about the same, wouldn't they? A. No.

Q. Within one or two? A. Within one or two of the time immediately after the conference started, the first two or
799 three years after the conference started.

Q. What happened to this lower class cargo during the competitive era, did it finally get on to its destination, or did it lay stagnant in these ports and never go on? A. There was no business; the business was not done. There were not the facilities for sending it forward. It would curtail the business in this low class cargo.

Q. You mean to say they were not offering it? A. Ships would refuse to carry it. The merchants knew that it was no use trying to get it forward, unless they could find some means of shipping it out. They might charter sailing ves-
800 sels; they might do so, and sometimes did.

Q. Have you any statistics to show the increase in the first two or three years of the conference in the amount of low class cargo that went forward? A. I have no statistics.

Q. Do I understand you to say that by reason of the conference, that there was a change in any way in the insurance premiums? A. There was a lowering of the insurance premiums by the conference steamers.

Q. What was that due to? A. Regular service; the steamers being regularly engaged in the trade.

Q. Were not these lines that you have mentioned and called the regular lines regularly engaged in the trade prior to the conference? A. They were making sailings in a somewhat regular way. 801

Q. What ones were engaged in a regular way; you mentioned a number the other day that you said were regular lines? A. We called them regular lines, yes.

Q. You mean to say that they did not get the same rate of insurance that they got afterwards? A. No; they did not get it at first.

Q. Due entirely to this combination? A. I think so, yes.

Q. Why was it, if they were sailing regularly; I mean if they were regular lines, what difference would it make to the insurer upon the question of the rate he would allow? A. The underwriter? 802

Q. Yes. A. If he saw the boats running regularly to and fro without accidents he would certainly take the risk at a lower rate of premium.

Q. These lines before the conference that you mentioned as running regularly to and fro without accident, some of them, you mean to say that they did not get the same rate of insurance that they did afterwards? A. They did not at first. 803

Q. So it was entirely due to the conference, the fact that they entered into a conference? A. I think it was.

Q. Isn't it a matter of fact that all the marine insurance rates have been reduced to all parts of the world, arising from the evolution which was brought about, not only by the amount of material, but the development of the science relating to the construction of ships, the development of navigation and the increased competition among common carriers? A. Yes; all rates are being lowered. Still, there is a difference between the tramps and the regular lines. 804

Q. Point out, Mr. Dodwell, where the difference is in addition to this general summary of the reduction of rates due to these things that I have just stated; wherein did the particular vessels of this conference reduce their rates because of the conferences as such? A. Because underwriters have more confidence in the fleet of vessels running regularly than they have in a fleet of vessels which is running irregularly. I am not an underwriter; I am telling you actual results; why underwriters do it, please ask some expert.

805 Q. You have just assented to the general proposition that I have read with reference to the general reduction of the insurance rates due to various causes? A. Yes.

Q. In addition to that, which I suppose you may assume has reduced the rate to these ports, the conference line rates, how much has the rate been reduced in addition to that reduction by reason of this conference? A. It is impossible to say the actual figures, but there has been a considerable reduction on the cargo carried by the New York conference steamers, as compared with rates that would be charged for outside boats, tramp boats.

806 Q. Do you get a rate, then, in this conference less than the rates that are quoted over the Trans-Pacific route? A. No, sir, certainly not; it is a shorter risk all through.

Q. Is it in proportion to the haul? A. In proportion to the haul.

Q. Do you mean to say that the Suez rate, the conference rate of premium, proportionately is lower than that which obtains with these vessels engaged in the Trans-Pacific trade? A. On the contrary, I think the Trans-Pacific steamers get a lower rate than we get.

807 Q. Is that due to the conference, too? A. That is due to the higher class of boats.

Q. You are coming right down to it now, that the rate of premium quoted by the underwriter is conditioned almost entirely upon the class of vessels, the personnel of the crew, and the officers, and to those general conditions with reference to the maintenance and navigation of the boats; is that right? A. Not solely so; it depends on the regularity of your sailings, and from their experience of the conference steamers carrying that cargo satisfactorily from their standpoint.

808 Q. How does the regularity of sailings affect the insurance rate? A. I think you had better ask an underwriter that question, Mr. Baldwin.

Q. I am asking you; you have already given an opinion here that since the conference, the premium rate has been decreased in view of the conference; I am trying to find out whether that was a mere supposition on your part? A. I say it is due to the conference having established these regular sailings, regular frequent sailings.

Q. You already have assented to the general proposition 809
that all the rates have been reduced? A. Yes.

Q. And because of the quality of the vessels, and the scientific advance and the state of the art of constructing these vessels, etc.? A. Yes.

Q. And yet you say that in addition to that that the conference, by reason of the conference alone, has brought about a reduction of rate? A. That is so.

Q. I have asked you in what sense, and you say because of the regularity of the sailings; I again ask you how would the regularity of sailings effect a reduction in rates in addition to what you have said? A. The regularity and the fre- 810
quency of sailings.

Q. Why would it; in what respect? A. I think an underwriter would rather give a rate on, say, twenty ships instead of on one ship; and he would give a lower rate to all those twenty ships than on just one ship. If you go to him with 100,000 pounds on one ship he will name to you a fairly high rate; but if you go to him with 100,000 pounds on twenty ships, he will name to you a lower rate.

Q. Then it is the bulk of the business? A. If it goes by the tramp steamer it will be charged a tramp rate.

Q. The tramp steamer is charged a higher rate because it 811
has not got the same class of ship, as a rule? A. It may be that our class of steamers is better.

Q. You say, Mr. Dodwell, that a strong outsider could fight his way into this trade? A. I believe so.

Q. And I suppose from that, I may assume, that in your judgment a weak outsider could not? A. I think so.

Q. That is to say, the fact that all the great merchants out there are tied up in this conference, in one way or another, that there would only be left to the outsider, the weak outsider, at least, business from the smaller merchants; and 812
by reason of your combination and your great facilities, you could easily lower the rates if necessary, to drive him out of business? A. Yes, we could do so.

Q. And the only way he could survive that kind of competition would be the fact that he had practically unlimited capital? A. Yes.

Q. And could withstand it? A. Yes.

Q. In other words, if you reduced the rates, assuming

813 that you were strong and he was strong, ultimately it would be the question of the survival of the fittest; is that it? A. Yes; there are plenty of strong owners outside of the New York conference.

Q. But since this conference, there have been no strong outside owners that have come in? A. No; they haven't come in.

Q. And no weak ones? A. No weak ones, no.

Q. You had managed to corral all the business and hold it? A. For a very good reason.

814 Q. Regardless of the reason, you have done it; answer by yes or no? A. Because there is no inducement for the strong owner to come in.

Q. Have you any particular strong owner in mind that you think could come in here successfully? A. I have several in mind.

Q. Name them? A. Maclay & McIntyre.

Q. What line? A. That firm is the owner of many steamers; I do not know what line.

Q. Are they tramp steamers? A. I think they are better than tramp steamers.

815 Q. Does that firm operate a regular line? A. I think they do.

Q. Do you think if they were to concentrate their energies on the business out there they could make a good showing against you? A. I think they could.

Q. Any others? A. I think I had better not mention any; there are so many strong owners.

MR. KIRLIN: You are not interested in getting more members in the conference, are you?

MR. BALDWIN: I have my own reasons for asking the question.

816

Q. Name some others; you mean of these great steamship lines that are not out there? A. I am not referring to the big steamship lines, the big regular steamship lines, but the owners of what we call tramp tonnage.

Q. What others have you in mind? A. I won't mention them; I had better not. It won't do me any good by and by, but they exist.

Q. Do you know a regular line that you could now recall that you think could successfully invade the territory out

there, not alone as tramps; a regular line? A. Again I do not think it is advisable to answer the question. 817

Q. Why not? A. I do not want it on record; this evidence will be read by everybody. I do not want to suggest to all these people that here is an opportunity for them to come in.

Q. Mr. Dodwell, there is only one reason that I know of that the courts recognize in this country for not answering questions; that is, that it would tend to either incriminate or degrade you?

MR. KIRLIN: I think the witness is well within his rights in refusing to answer a personal question like that. I think it is very obviously immaterial. 818

MR. BALDWIN: I think I have a right to ask him whether a line could come in, and then to ask him whether his opinion was worth anything on that subject.

Recess.

Afternoon Session.

Q. Mr. Dodwell, you say there are times when you have compared your rates with the rates of the European conference? A. That is so. 819

Q. What do you mean by European conference, what conference? A. That is the conference which exists, the steamers running between Japan, China and the Straits to European ports, that is called the European conference.

Q. Concerning the same companies as in this conference? A. I do not think any of our companies are in that conference, they are entirely separate.

Q. Entirely separate? A. I think so; I do not think one of them are in.

Q. How often would you compare with the European conference rates? A. Very rarely. 820

Q. What would be the object of comparing at all? A. Simply that we should see their tariffs and find out whether they were different than ours.

Q. If they were, then what? A. Whether it was possible for them to reduce theirs or for us to advance ours.

Q. Your purpose was to conform as near as possible to the European conference rates? A. Keeping ourselves all the time slightly under theirs.

821 Q. Slightly? A. Yes, sir.

Q. Then to a certain extent the prevailing rate which you established and maintained in this conference would be based to a certain extent at least, if not largely, on the European rates? A. Roughly so.

Q. The European conference rates were not based upon the tramp rates, were they? A. Largely so, must have been.

Q. If since 1904 there were comparatively few tramps in this trade, even in the Java trade, and confined largely to charters or to full cargoes, in what sense would the European conference rates for parcel business and regular line work be
822 based upon the correct rate of tramps that were engaged in carrying to a very great extent inferior cargo? A. I do not know that I quite follow that; it is too long a question.

Q. If as a matter of fact, Mr. Dodwell, the regular line's business is composed of different classes of merchandise in each steamer as it goes out, and the tramp steamers usually in that trade charter or take full cargo, in what sense or how would the European tariff rate be based upon their charge? A. Exactly in the same way that ours would be based on what the tramps were, in these bulk trades.

828 Q. In the bulk trades? A. In the bulk trades.

Q. Would the European tariff or your tariff it may be based for the cargo that was not in bulk, upon tramp bulk charges? A. It would be based upon cargoes, parcel cargoes, not the bulk cargo.

Q. The tramps were not based in this parcel cargo to any extent, were they? A. No, they were not.

Q. If that is so when you said the rates would be based upon the value of the tramp tonnage, you are only speaking of when it is bulk cargo? A. Yes.

Q. And not when it refers to the broken cargo or parcel
824 cargo? A. Yes.

Q. Based on that, too? A. I cannot follow you; I do not follow quite what you want, Mr. Baldwin.

Q. You testified two or three times this morning that the bulk of your business of the regular lines is in what they call parcel cargo? A. That is right.

Q. A variety of freight? A. That is right.

Q. If the tramps do not engage to any extent in that class of business but confine themselves to bulk cargo, or lower

class of freight, how and in what sense would your prices for your broken trade be based upon a bulk trade of a tramp? A. If we put our rates too high the tramp is attracted, bound to come there; she would be attracted, she would want these parcels and get a full cargo among these parcels. 825

Q. What you meant was the rate was fixed not upon what the tramp was actually charging but what the tramp might do if you fixed a rate that might be too high, is that so? A. That is so.

Q. In the agreement you have a provision more or less elastic by which your conference there at Hong Kong could lower rates under certain provisions, assuming, I presume, if a tramp should intervene, so as to meet what rates they should make? A. Yes. 826

Q. Then the rates that were fixed, if you use this discretion to meet competition, were not based upon what the tramps were charging but what the tramps might charge, is that it? A. That is so.

Q. What do you mean when you say that the basis of the trade rate was the value of the cargo? A. The better class cargo would bear a higher rate of freight according to the value of it, it would be charged a higher rate of freight than the lower class of freight, which was a common cargo and of poor value. 827

Q. Then it was not based upon the amount of space it would take, but upon the value of the cargo? A. Also on the amount of space it would occupy.

Q. In answering Mr. Kirlin's questions, you did not indicate any other source of fixing a freight rate, but you said based upon the value of the cargo?

MR. KIRLIN: I think you are wrong there. I think he said the space occupied.

MR. BALDWIN: I will accept that if you say that is what he said, but I did not get it that way. 828

MR. KIRLIN: I think you are wrong.

Q. If you fix your rates at times slightly below the European conference rates, what was your reason for it? A. I do not know as any special reason.

Q. Just arbitrarily done then? A. Yes, sir.

Q. Now, in reference to the increase of the rates, they

829 have uniformly increased all over the world I understand you to say? A. I believe so.

Q. In answer to a question of Mr. Kirlin you stated that part of the increase was due to the running of the vessel, etc.? A. Yes, sir.

Q. What is your source of information in making that statement? A. My own firm is largely engaged in supplying bunker coals for steamers. I know that the price of bunker coals have advanced.

Q. How much? A. 10 to 20 per cent.

Q. Which is it, 10 or 20 per cent.? A. Well, I can tell
830 you some that have advanced 50 per cent.

Q. You mean a certain class of bunkers? A. I mean a certain class of bunkers.

Q. And been maintained at that rate of increase? A. And been maintained at that rate of increase.

Q. What kind of coal? A. Cardiff coal.

Q. What else? A. Japanese is another kind.

Q. Russian? A. Ten or a little more than ten.

Q. What else has advanced? A. Labor, what we have to pay now for our stevedore charges.

831 Q. How much has that advanced? A. 15 per cent.

Q. 15 per cent.? A. Yes, sir.

Q. Is that uniform in all the ports? A. No, not in all the ports.

Q. In what ports? A. The large ports, Hong Kong, Shanghai, Yokohama, Kobe and Singapore.

Q. How long has there been an advance in that? A. Four or five years.

Q. The advance of the cost both in coal and labor has been largely since the Japanese war, hasn't it? A. I think it has.

Q. It has advanced and grown with the great advance in
832 business? A. I think so. Crews' wages is another item I think I referred to before.

Q. How much have they gone up? A. From 20 to 25 per cent.

Q. In all the ports, from all the ports on all lines? A. Yes, all through.

Q. All lines get 25 per cent. more than they did? A. They all have to pay more.

Q. I am asking you about the rate? A. Yes, they have all had to pay this increase.

Q. How long has that obtained? A. The last three years. 883

Q. And that has been brought about largely because of the increased demand, has it not, the increased trade has required increased facilities, and in turn a greater demand for labor? A. My understanding is it has been brought about through the formation of the unions, the sailors' unions.

Q. Entirely? A. I think so entirely.

Q. What are the nationalities as a rule of the crews on these conference boats? A. Chinese largely, sailors and firemen.

Q. And you say there has been an advance of 25 per cent.? A. Quite. 884

Q. In the Chinese labor? A. Quite.

Q. How is the expense of the conference maintained, who bears the expense of the conference there? A. What expense do you refer to?

Q. Don't you have an expense at the place where you hold your conference, in which you have your meetings? A. The secretaries?

Q. The secretaries? A. It is borne by the conference and shared among the owners.

Q. How as to employees? A. They have no employees at all. 885

Q. Just a secretary? A. No, sir, my firm, Dodwell & Company, are secretaries of the conference in London.

Q. Do you get any compensation for that? A. We do.

Q. Who bears all the other expenses, like the cablegrams, for instance? A. The conference, the steamship owners divide it in this pool, it is all covered in the pool.

Q. Are there any other expenses that you can now recall that fall upon the pool? A. Nothing but clerical expense.

Q. About how much do all the expenses amount to a month? A. A month? 886

Q. Yes, about how much? A. It would be impossible for me to say without looking up the figures; nothing very much.

Q. They are all deducted from the expense of the conference before there is any division of the pool? A. That is so.

Q. And consequently before there is any division of profits among the stockholders? A. That is so.

Q. Mr. Dodwell, who made up this Defendants' Exhibit 1? A. Mr. Thomas M. Dermer.

837 Q. Where? A. At our office in London.

Q. You did not supervise the making up of it, did you? A. I did not.

Q. You do not pretend this is complete, do you, the number of vessels, or the number of sailings? A. I think it is complete.

Q. Didn't you say there were some sailings here which were missing? A. There is a note at the foot there you will see.

Q. It says here "In these years a few steamers have been omitted and their earnings deducted as their D. W. Capacity
838 is not recorded."

MR. KIRLIN: That means they are omitted in this column but some are included in this column; they were omitted here because he did not have the reference sufficiently; this is on the measurement basis and this is on the dead weight basis and on these there are some omissions.

Q. From what memoranda or data was this made up, if you know? A. From the pool statement which they issued either six monthly or annually, annually I think.
839 Q. You mean only the pool statement as to the pool numbers and the total number of steamers? A. The pool statements contain full particulars.

Q. In the net trade at New York? A. Everything.

Q. Did it make up a statement which shows the units? A. Yes, sir.

Q. In other words, this is just a copy, is that the idea? A. This is only a summary of the total; the other statement will give the detail of each vessel loaded.

Q. How often are those pooling statements made up? A.
840 Every year, certainly; I think they are trying to make them up every half year.

Q. The accuracy of this, of course, you do not personally know anything about—personally? A. Personally—I can vouch for the correctness and bona fides of Mr. Dermer, who made it up.

Q. I did not ask that; you are a very intelligent man, Mr. Dodwell. You have not taken the data yourself and made it up? A. I have not taken the data myself.

Q. And therefore, as to the accuracy in the number of the units and the amount of freight that is contained in here, you accept it yourself as your associate gave it to you; personally you did not compare it with the originals at all, did you? A. I did not. 841

Q. You were asked by Mr. Kirlin considering the earnings of the conference per ton, do you remember that? A. Yes.

Q. From what sources did you make that up? A. From that statement.

Q. It is a deduction from the— A. Statement which was prepared.

Q. This Exhibit 1? A. This Exhibit 1. 842

Q. Which you personally did not make up? A. Yes, sir.

Q. You say that there were a number of times each year that you had to charter steamers after the conference was formed? A. Yes.

Q. To provide for the excess tonnage that was required? A. Yes.

Q. How many would that average a year, Mr. Dodwell? A. You have the actual figures. 1909, seven steamers; 1910, five steamers; 1911, nine steamers.

Q. How many for 1908? A. Presumably none. 843

Q. How about 1907? A. None.

Q. 1906? A. None.

Q. Beginning in 1908 it seems to be the first time? A. The first time.

Q. It was coincident with this general increase of trade that you have spoken of, wasn't it, some time immediately after the Japanese war there were evidences of the increase of trade everywhere, weren't there? A. The war was over in 1905.

Q. It was not until 1908 or 1907 that this increase began to take form, was it? A. There was a tremendous increase immediately following the war. 844

Q. There was? A. A tremendous increase, which was unjustified.

Q. I am not asking you whether it was justified or not, it is not necessary to say that; I am asking for a fact; prior to 1908, as a fact, you did not think there was? A. We were unable to provide enough tonnage ourselves.

Q. From whom did you charter those steamers? A. In the London market from anybody.

845 Q. Didn't you get a good many from Royden? A. I do not think so.

Q. Those steamers which you chartered, were they put in the trade the same way that your regular steamers were? A. They were mainly used to carry large parcels of sugar and hemp or Straits produce; I think they were entirely used for that, I do not think they loaded the cargo from Japan and from the Chinese ports.

Q. They were chartered very largely to handle this low class freight, weren't they, from these particular ports of which you have spoken? A. Not all of it.

846 Q. But mainly? A. Mainly.

Q. Did you charter those boats as they came in, or did you arrange—you say you made the charters in London? A. We made the charters in London or with their representatives.

Q. How did they come out? A. I could not tell you.

Q. You do not know whether they came out in ballast or in cargo, do you? A. They were out at the time.

Q. They were already out? A. They were already out.

Q. And you do not know what they were loaded with? A.

847 I could not tell you how they got there.

Q. Had some of them been unloaded by you? A. I do not think so.

Q. And some of them sent out by the conference the other way? A. I do not think so.

Q. And no charge? A. I do not think so.

Q. You said that in one charter you lost $3,000? A. Pounds.

Q. 3,000 pounds? A. Yes, sir.

Q. What was the class of cargo that was shipped in that boat? A. Hemp.

848 Q. The loss was due to what? A. We had to pay the market price for the steamer, and the conference rate of freight was insufficient to cover it.

Q. At that particular time? A. At that particular time.

Q. But in the average of these boats that you chartered for this excess tonnage you made some money on it? A. We made about 240 pounds a steamer on an average; that is not including this last one I have spoken of, that was just recently.

Q. Just when was this that you lost the 3,000 pounds? A. She must have been chartered some time in January of this year, sir, and loaded in February of this year. 849

MR. KIRLIN: That is 1913?
THE WITNESS: That is 1913.

Q. At what port was she? A. She was loaded at Manila and left there on the 8th of February, she then went to Singapore and left on the 13th of February, and then to Penang and loaded and left there on the 27th of February. I do not know what time she arrived here, I have no date of her arrival here. 850

Q. She was loaded, at any rate, for Manila, is that the idea? A. I do not know how she loaded or how she got there.

Q. That is, how you picked her up? A. We had to load her.

Q. That is where you got the hemp, is it? A. That is where we got the hemp.

Q. And she loaded entirely at Manila? A. No, sir, she loaded at these three ports.

Q. How much notice had you had in making this charter when you lost the 3,000 pounds; did you make it suddenly, or did you have considerable notice in advance that you would require that amount of space? A. We had a month's notice that the amount of cargo to go from Manila would be in excess of what our own tonnage would be able to supply; it became necessary to charter her. She was the only boat that could give the loading needed by the merchants, she was the only boat, and we had to pay. 851

Q. Had to pay what she asked, is that right? A. Certainly, we had to take what boat we could get, and she was the only boat that would fit actually for that purpose. 852

MR. KIRLIN: What boat was this?
THE WITNESS: The Clan McIver.

Q. It was rather a peculiar situation out there at that time, was it not, and the owners realizing it was the only vessel available for that particular time and the price, is that it? A. The owner was able to do in other directions, and therefore would not take this unless he got his own price.

853 Q. What other directions? A. He could have got a charter with beans from Vladivostock, which would have been as good as we offered him, so he would not take any less, and we had to pay him, and therefore it became the market price.

Q. That is what you call a market price? A. Certainly.

Q. Did you discuss with the owner his knowledge of the bean market out there? A. No, sir.

Q. How do you know that he could have loaded his boat with this product that you speak of? A. Other steamers were chartered shortly after we took her for this very pur-
854 pose, this very thing; he could have got it, there was a cargo offered him on the London market at the very time.

Q. Mr. Dodwell, you say that 50 per cent. of the business from these ports was confined to these large merchants, at least 50 per cent. to these large merchants? A. Yes, sir.

Q. Now, how much of the balance that goes from these small ports and minor ports, as you call them, where the steamships are represented by merchants who are agents? A. How much goes from the small one?

Q. Yes? A. Only a very small amount.

855 Q. How much would it be? A. I could not give you a percentage.

Q. 10 per cent.? A. I could not give you a percentage, it would be impossible to say.

Q. Where is Mitsui & Company, where are they? A. Mitsui & Company are a very big firm, indeed; they are located all over, world-wide.

Q. They are large shippers over this conference line, aren't they? A. Yes, they are large shippers.

Q. Don't they represent the line in any port at all? A. I think not, excepting at Dalny.

856 Q. The American Trading Company, where is their place? A. Most all the ports in China and Japan.

Q. They represent one of these lines at Kobe as agents? A. I think they represent the Weir steamers, the Bank Line, as it is called, which is a part of the Houlder steamers.

MR. MONTGOMERY: A part of the American-Oriental Line.

THE WITNESS: A part of the American-Oriental Line.

Q. Did they ship largely over the conference lines? A. The American Trading Company? 857

Q. Yes? A. I should presume so.

Q. In addition to the 50 per cent. or more which you say of these large merchants who are also agents, their volume of business to the trade, how much would you add represented by Mitsui & Company and the American Trading Company? A. I could only guess at it, Mr. Baldwin.

Q. It is only approximate; if you cannot state it, can you approximate it? A. Approximately 10 per cent.

Q. Approximately 10 per cent.? A. Approximately 10 per cent. 858

Q. Who was the merchant who was the representative of the steamship line at Chefu? A. Anz & Company.

Q. They represent one of the lines? A. They represented us, the Dodwell Line.

Q. At Tientsin? A. Yes, sir, Wilson & Co.

Q. Are they large shippers? A. Yes, sir.

Q. And they ship to various ports, do they? A. They do.

Q. And on the conference lines? A. And on the conference lines.

Q. At Keelung? A. Boyd & Company. 859

Q. Are they large shippers? A. Fairly large.

Q. And from various ports? A. From Keelung.

Q. Only? A. Only.

Q. And on the conference lines? A. On the conference lines.

Q. And they represent what line there? A. Dodwell & Company.

Q. What line do Wilson & Company represent? A. The Dodwell Line.

Q. These other ports on the Yang tse Kiang River, are they represented or do they have representatives there of these various conference lines? A. Yes, all have representatives. 860

Q. Do you have a representative there? A. Yes, but I cannot tell you who they are; it is of so small importance.

Q. Taking these river ports at the Yang tse Kiang, I suppose? A. Yes, sir.

Q. Chefu, Tientsin, and Keelung, how much is their business, approximately, how much would their business ap-

861 proximate? A. Of the 100 per cent. of business that we do?

Q. You have counted 50 and 10. How much do they represent? A. I could not tell you.

Q. Another 50 per cent.? A. I could not tell you, it is impossible.

Q. It is quite large, isn't it? A. It is a consideration.

Q. Anz & Company, aren't they large shippers? A. No, sir; Chefu is a small place; the Yang tse Kiang is a large place.

Q. Don't they ship from various places besides Chefu? A. I think Anz & Company are only established there.

862 Q. They might have their main office established there, but they might ship from other ports to a considerable extent? A. I have never heard of their shipping from other ports.

Q. You say you do not know, but can you approximate at all the amount, what their volume of trade would amount to? A. I could not—I could not tell.

Q. Mr. Dodwell, haven't you got the tariffs that have been in use there since 1904? A. I have no tariffs except what I gave you.

868 Q. That is the one that you have? A. That is the one that I have, the ones that I have; I have no others.

Q. With you, but have you them anywhere? A. If there are any they would be in our London office; I do not think there are any.

Q. Will you find out and communicate with Mr. Kirlin and let me have them? A. Certainly.

Q. Let me know whether there were or not? A. Yes, sir; these two things, the Singapore and the tariff since 1907.

MR. KIRLIN: He wants the tariff of 1904.

THE WITNESS: I have given him whatever I have.

864 You want any tariffs that have been published?

MR. MONTGOMERY: All of them.

THE WITNESS: All of them, yes, sir.

By Mr. Montgomery:

Q. Mr. Dodwell, about what percentage of the goods ference lines is shipped by people other than agents at one shipped from the Orient to the United States by the conplace or another of one or more of the conference lines? A.

I could only give a guess, I could not answer for anything of that sort. 865

Q. In your best judgment, about how much would it be? A. I should put the—I will tell you it is a rough guess—40 or 50 per cent.

Q. 40 or 50 per cent.? A. Yes.

Q. You have already accounted for 60 per cent. shipped here by the agents named in the agreement, and by Mitsui and the American Trading Company? A. The 10 per cent. to Mitsui and the American Trading Company I tell you is approximate.

Q. And about 50 per cent. by others named in the agreement? A. Yes, sir. 866

Q. That is 60? A. Yes, sir.

Q. And then there is some considerable amount by such firms as Anz & Company? A. The 50 per cent. is approximate, Mr. Montgomery.

Q. Yes, I understand? A. And the 10 per cent. is approximate; what I told you just now, 40 to 50 is approximate, it is a guess, and must be a guess; it is only my idea, what I think.

Q. A good many of those firms have houses in the United States and ship in the other direction also, don't they? A. Yes, sir. 867

Q. The American Trading Company? A. Yes, sir, and Mitsui & Company.

Q. Jardine, Matheson & Company? A. Yes.

Q. And you do? A. Arnhold, Karberg & Company.

Q. Dodwell & Company? A. Dodwell & Company, Carlowitz & Company.

Q. The China & Japan Trading Company, are they agents anywhere? A. I think not; no, they are not agents.

By Mr. Baldwin: 868

Q. Mr. Dodwell, are any rebates paid in the Philippines? A. None.

Q. Are there any circulars distributed to the merchants suggesting rebates? A. None.

Q. Why was the Philippine trade exempted from that general scheme of rebates? A. Because of our uncertainty in regard to the law of the United States, and following the advice of our lawyers in London.

869 By Mr. Montgomery:

Q. Mr. Dodwell, you had a pamphlet—I do not know that I can lay my hands on it—something in form like this Westward Agreement, that was printed and never signed; it embodied a great many of the terms of this agreement, and through a mistake it was published, it was printed as Exhibit 2 to this petition. Have you read this petition? A. I have not.

Q. I want to call your attention to one paragraph in that pamphlet that I speak of, and perhaps it will refresh your
870 recollection. It had this clause—

MR. KIRLIN: It is in the first agreement, and you have got it in evidence, Mr. Montgomery.

MR. MONTGOMERY: No, it is not in there; this is in between 1904 and the other one, and it was never executed, I think, it was a proof copy.

Q. It had this clause, Mr. Dodwell, numbered 23: "In order to preserve harmonious relations with one another, and to avoid friction, the Signatories bind themselves and their respective supporters, during the currency of this
871 agreement, to abstain from attacking, or competing for, any trade in which any other of the Signatories may at present be engaged." Do you remember that clause in a tentative agreement that was drawn up between you, and was not executed? A. No, I do not remember it; there were a great many drafts before we came to the final one.

Q. Were a great many of them printed in this shape before the final one was executed? A. I should not think so, not a great many printed.

Q. Were there any? A. There would be some printed, certainly.

872 Q. You do not remember any discussion about that clause? A. No, I do not remember that at all; it is a long time ago.

Q. Can you state now whether there is any agreement in writing between the parties by which that provision is substantially adopted? A. I had no idea of it; I have no knowledge that any agreement of that sort existed, no knowledge of it.

Q. You were one of the signatories to the agreement as finally executed? A. Yes, sir.

Q. And you know most of the discussion that took place about it? A. Yes, certainly. 873

Q. And were present? A. Yes.

Q. And yet you do not recall that provision there? A. The detail of the thing I have already testified I had no hand in.

Q. And you do not know why that was left out? A. No, I cannot tell you; I presume it was deemed unnecessary.

Q. I call your attention, Mr. Dodwell, to paragraph 20 of the agreement of 1904: "That in order to preserve the trade as far as possible for those recently and now supplying it with tonnage, it is considered necessary that shippers should 874 be bound to them by a system of deferred rebates, made payable to the shippers in the Far East, so as to avoid raising the question of the legality in the United States of such an arrangement, and it is intended to take steps at once to formulate a plan for carrying out this idea." I do not find that in the agreement of 1905; why was that omitted? A. It was unnecessary; it was unnecessary to put it in in the first place.

Q. As a matter of fact, the rebates always were paid in the Far East, were they not, rebates were always paid over there, weren't they? A. They were always paid in Hong 875 Kong.

Q. And that was always the reason, wasn't it? A. Yes, they were always paid in Hong Kong, except the Philippine rebates, which were paid in London.

Q. And they were paid in London for a similar reason, weren't they? A. Yes, sir.

Q. So as to avoid raising the question of legality in the United States? A. Yes.

Q. In other words, you realized the force of the reason, but you did not think it was just wise to continue having 876 that in the agreement, so you left it out? A. It was a matter of indifference.

Q. Wasn't it as a matter of fact left out because you thought it was not a very good thing to have in print? A. I do not think that occurred to us at all.

Q. Is there a pool of the agents' commissions in the Orient, Mr. Dodwell? A. No, sir.

Q. Those are not pooled? A. They are not pooled.

877 Q. You say that no tramps go from the United States to the Orient now? A. No tramps from the United States?

Q. Yes? A. I do not think I have made that assertion.

Q. What is the fact about it? A. I should think a good many do go.

Q. A good many go from here? A. Yes.

Q. What with? A. Coal, oil, kerosene oil.

Q. From what ports? A. Norfolk, Virginia, coal; oil here in New York, principally.

Q. Any phosphate rock go out there? A. Occasionally.

Q. Where from? A. Florida.

878 Q. Florida? A. Yes, sir.

Q. How do those boats come back here? A. It all depends.

Q. They cannot get any cargo direct back here from the Orient, can they? A. If they arrive there in the sugar or the rice season they could easily get cargo, or the bean season.

Q. Or the bean season? A. Or the bean season; that is a new trade which has arisen during the last two or three years, three or four years.

879 Q. They cannot get any cargo such as the regular lines carry? A. No.

Q. That is taken away from them? A. That is done every time.

Q. That is a thing that has to be considered when they make the rates on those products, isn't it? A. Presumably so.

Q. Do we ship much coal to the Orient? A. I could not tell you how many cargoes you send out.

Q. You say you deal in it? A. Not in American coal.

Q. But any coal? A. Any coal.

880 Q. You do not know how much? A. It does not affect the coal business we do, the American coal.

Q. A different quality? A. Yes, an entirely different quality; I think the coal which is sent from here goes mainly for the use of the American navy.

Q. That would be at Manila? A. Yes, I think so.

Q. You testified, Mr. Dodwell, that it is very necessary for the shipper to know, that is to say, for the merchant to know what the rate is going to be, didn't you? A. Yes.

Q. That for the same reason fluctuations in the rate of exchange are annoying, that fluctuations in the way of freight have a like effect? A. Yes. 881

Q. On the trade? A. Yes.

Q. And a merchant wants to know what the rate is he is going to pay and the rate of his competitor who ships at a different time is going to pay? A. Yes.

Q. I understood you to say that when you lower a rate that is done without notice to anybody; is that right? A. Not without notice; we must tell everybody.

Q. When you lower a rate? A. Yes, sir, certainly; it goes into force immediately. 882

Q. It goes into force immediately? A. Yes, sir.

Q. The rate goes into effect without the shippers having had notice at all? A. They get no notice beyond, say, one day.

Q. In other words you may ship a cargo today and pay a certain rate of freight? A. Yes.

Q. That rate may be lowered tomorrow? A. Yes.

Q. And you get your first knowledge of it the day it goes into effect? A. That is so.

Q. That interferes a little with that stability and knowledge, doesn't it? A. The pre-conferences, sir, that applied to the pre-conference times. 883

Q. Didn't I understand you to say that is your present system of notice? A. When we have lowered the rate there has not been more than two or three occasions, and it has been for special cargo or the special request of a shipper.

Q. That may be, but how about the other shipper who ships at a higher rate? A. We would not see that that man was hurt, not allow the man to be hurt; it has been for special purposes, the lowering of the rates.

Q. When you get a request you would have to take into consideration whether somebody else had shipped? A. Certainly. 884

Q. Recently? A. Quite so.

Q. Your rebate, I think, provides that the Pacific shipments shall not invalidate the rebates by your lines? A. I do not know whether it is stated.

Q. That is the fact, isn't it? A. It is a fact.

Q. Don't you know, Mr. Dodwell, as a matter of fact,

885 that since 1912 some time or 1911, the Pacific lines have been paying a rebate on shipments to the United States? A. I do not know it; as a matter of fact, I do not know it.

Q. The shipments by the Suez do not invalidate the rebates, do they? A. I do not know it; I have not seen any circular.

Q. You have heard it, haven't you? A. I have heard some reports that some of the Pacific cargo—cargo carried only for the Pacific ports—have been subject to a rebate; I have never seen a circular, and I do not know what the rebate is; we are not parties to it in any way; that is, we are not rep-
886 resenting any Trans-Pacific line which is giving any rebate or is a party to any agreement of that sort.

Q. Did you ever know whether or not shipments by your line were invalidated? A. The New York Line, the Suez Lines?

Q. Yes? A. We knew they did not invalidate it.

Q. You knew shipments by your lines did not invalidate those rebates? A. Never.

Q. You do not understand me, Mr. Dodwell. I say, did you ever know in regard to these rebates that you understood were paid on shipments on the water part of the haul
887 by the Pacific, as to those rebates, was it your understanding or did you have any understanding as to whether a shipment by the Suez lines would invalidate a shipper's rebate in that Pacific trade? A. I cannot follow you, Mr. Montgomery; I am rather sorry about it.

Q. You say you understood as to the water haul across the Pacific there has been a rebate? A. Yes.

Q. You have heard that? A. I have heard it said.

Q. You have heard that? A. Yes, sir.

Q. Did you hear whether or not if a shipper otherwise
888 entitled to that rebate across the Pacific shipped by your lines; that is, the Suez Line, he would invalidate those rebates? A. We never heard anything of the sort.

Q. You never inquired about that at all? A. I do not believe it would occur.

Q. You do not believe it would forfeit the rebates? A. I do not believe it.

Q. You are satisfied of that? A. I am sure of that.

Q. What makes you so sure it would not invalidate the

rebates if shipped by your lines? A. What good would it do, they are taking a different class of cargo than we are. 889

Q. You do not compete— A. To a very slight extent, practically no competition.

By Mr. Baldwin:

Q. Mr. Dodwell, most of the carriers from the United States to China and the other Oriental ports are tramps, are they not? A. Most of the carriers?

Q. Yes, other than those engaged in this conference are tramps? A. Our conference is only from China and Japan to New York. 890

Q. These conference steamers I mean? A. They have nothing to do with anything but westwards.

Q. Do you know whether or not outside of the same lines that are in this conference carrying freight from the United States to the Oriental ports, outside of those, that almost all the carriers are tramps? A. I presume they are tramps.

Q. Most of the tonnage that is carried from Europe to the Oriental ports is by regular lines that carry passengers as well as freight, are they not? A. Not most of the lines.

Q. But some of them? A. Some of them do; some of them are mail lines, passenger boats. 891

Q. In any event, practically all that carry freight from the European ports to Asiatic ports are regular lines, aren't they? A. Regular lines, yes, sir.

Q. And as a rule they are very much faster than tramps? A. That is so.

Q. And very much faster than the ordinary cargo steamers or tramps that operate from the United States to the Orient? A. Yes, sir.

RE-CROSS EXAMINATION by Mr. Kirlin:

Q. Mr. Dodwell, in speaking of the increase in exports from far Eastern ports to New York, I presume you have had in mind volume and not value? A. I have had in mind the tonnage. 892

Q. The tonnage? A. The bulk of it.

Q. You have not intended to detail the values at all? A. Not at all.

Q. You say that, although there has been a very great increase, a world-wide increase in the export of produce

893 from the Far Eastern ports, the comparative increase in tonnage has existed? A. Yes, sir, I think it has.

Q. So far as the excess is concerned? A. So far as the excess is concerned.

Q. That is, the improvements that the conference have inaugurated have not only kept pace with the great development of commerce but have stimulated it? A. That is what I believe.

Q. So that, while you disclaim any intention in saying that the development of trade has not been slightly due to the conference, do you feel that it has been in a measure?

894

MR. BALDWIN: We object to what he feels.

A. In a measure it has.

Q. Has it been?

MR. BALDWIN: I object to that.

A. In a measure it has been due to the conference, partially due to the conference and partially due to natural development.

Q. In answer to Mr. Baldwin's inquiry as to whether there was any agreement with the shippers, with regard to fur-
895 nishing them an adequate supply of tonnage, and as to whether that agreement which you said existed was not entirely between the ship owners, you stated it was between the ship owners, stimulated by the request of merchants? A. Certainly.

Q. Is that all there was of the agreement as between the lines and the merchants?

MR. BALDWIN: If there is anything in addition.

Q. Is there anything in addition to what you have stated?

896 MR. BALDWIN: Objected to

A. The rebate circulars confine these people to shipping their cargo by the conference steamers, thereby inferring that the conference will supply whatever tonnage is needed.

MR. BALDWIN: I move to have stricken out "thereby inferring."

Q. By the terms of the rebate circular the payment of the rebate is confined to those who may have found it to their

interest to confine their support and shipments to the steamers of the conference lines? A. Yes, sir. 897

Q. If you did not take all their cargo and supply tonnage for it, it is quite obvious they could not confine their support and shipments to your lines?

MR. BALDWIN: Objected to.

A. That is the very question that has arisen in connection with Manila shipments, Philippine shipments, it is not Manila.

Q. In whatever form, do you mean the agreement or understanding exists, do you say there is an unwritten understanding between the lines and the merchants that the lines shall furnish the tonnage? A. There is. 898

Q. Necessary to carry the good and the bad? A. There is.

Q. And has it always been done? A. It has always been done.

Q. Since the conference went into effect? A. Since the conference went into effect.

Q. You were also asked some questions about how you dealt with this rebate, as a merchant; that is, whether you kept it and charged the going price in addition to your produce, or whether it was taken account of in sales, and you said that in f. o. b. shipments the rebate was to be credited? A. To the consignee, yes. 899

Q. Did you deal with it at all in the c. i. f. shipments, and, if so, how? A. In our calculations we would make a reduction of what the c. i. f. cost was.

Q. That is, it would reduce your expenses? A. It would reduce our c. i. f. cost.

Q. And would therefore reduce it pro rata to the consignee? A. Yes, sir. I understand that every merchant does the same. 900

MR. BALDWIN: I move to have that stricken out.

Q. Would it be practicable for the other merchants to do business in competition with you if they do not take that 10 per cent. into account in calculating their cost and the prices at which they could sell?

MR. BALDWIN: Objected to as speculative.

901 A. It would be impossible.

In answer to other questions you gave lists of merchants at different ports with whom consultations had been with regard to fixing freight rates. I think you have already said that all those firms that you have mentioned were mercantile firms, and, if not, do you say so now? A. They are, all those names that I gave.

Q. Are they all merchants whose interests as shippers are as great or greater than their interests as agents of steamship lines?

902 MR. BALDWIN: I object to that as incompetent and immaterial, it is asking him as to matters which he could only know by hearsay, and it is asking for a conclusion.

Q. What is the fact about it, is their interest greater or not? A. Their interest is much greater as merchants; [every merchant has shipping agents].

Q. In answer to a question of Mr. Baldwin you said that the pool had eliminated competition. Were you alluding to the sporadic competition that you have spoken of before? A. I was.

903 Q. It did not consider any eliminating of competition of the American-Manchurian Line? It did not.

Q. You started, in answer to Mr. Baldwin's question about consultations with merchants in relation to rates, to say something about a meeting with Manila merchants, and you were stopped. Tell me what that meeting related to regarding rates? A. The conference was desirous of increasing the rate of freight on hemp and also of having the packing of the bales of hemp attended to better than it had been done. The bales varied so much in size that they were becoming impossible to stow properly, a bale would measure anything
904 from 10 cubic feet up to 15 feet, and yet we were calculating on the 10 foot basis. We, therefore, sent a circular to shippers, saying not only should the freight be put up, because the reason was I presume an increase in freights generally, but we wanted to have these bales repacked.

Q. Standardized? A. Standardized, just the same trouble as occurs with raw cotton from this country, we asked to have it standardized.

MR. BALDWIN: I move to strike out the statement about raw cotton, it has nothing to do with this case. 905

THE WITNESS: We proposed, therefore, to not only increase the rate of freight but also sent out instructions if the bales exceeded 12 feet they should be rejected and sent back for repacking. This had been done after talking the matter over with one of the large shippers, Smith, Wood & Company, of London, they are the London house of Smith, Bell & Company.

Q. Smith, Bell & Company of Manila? A. Smith, Bell & Company of Manila. Mr. McPherson was agreeable and thought it was quite right and necessary. 906

MR. BALDWIN: I object to what somebody else said, and ask to have it stricken out.

MR. KIRLIN: He is telling the conversation.

MR. BALDWIN: He cannot tell the conversation.

THE WITNESS: It was a conversation with me, and we sent the circulars around, and we immediately found we had touched on a hornet's nest. All the shippers were around our office in 24 hours, we got them to come before us; they put their difficulties before us, and they agreed the rate of freight being increased was all right, with the understanding they would take it up, without making it arbitrary they would take it up and try and have the packing done better. That was a matter of consultation with shippers. We gave way and trusted to the shipper to put this right; it has been owing to their exertions. 907

Q. You said also that complaints made by shippers were usually made through the merchants who were acting as agents at the different ports. Did these merchants' agents merely voice their own complaints, or did they voice the complaints of their constituents? 908

MR. BALDWIN: Objected to as incompetent and immaterial.

A. The merchants would write, it might be to the American Trading Company, representing the Weir Line, and say, "The rate of freight on Antimony ore is 37 and 6 pence; it is

909 too high; we want you to put it before the conference and get it reduced." The American Trading Company would then refer it to the secretary of the conference in Kobe, and he in turn would refer to Hong Kong; that is how those things were worked; each agent would give his own opinion as to whether it was advisable to lower it to meet their wishes.

Q. So these complaints, although they came through the medium of the merchants who were agents, in fact, reflected the opinion of all the merchants at the port who had complaints to make? A Virtually so, yes, sir.

910 Q. You were asked whether you had paid anything to this Singapore group of merchants in order to get their release from that agreement, and you said that the action in regard to the termination agreement had been connected with or had originated in some action by the Governor of the Straits. Did you carry the Governor along with the settlement that was finally made with the merchants? A. He was consulted before any arrangement was made, and he approved of the settlement.

Q. And the terms? A. The terms were submitted, too.

911 Q. You never knew, as I understand it, how these four mercantile houses divided the five per cent. that they got? A. We had no information about that, never knew.

Q. Whether they kept it themselves or distributed it among all the merchants you never knew? A. I never knew who they gave a share to.

Q. You said you had known of claims being submitted to the conference in London. You referred, I suppose, to claims arising from damage during transportation, did you? A. No, those would not be referred to London; that would be each owner's concern.

912 Q. Are claims for damage pooled in any way? A. Nowhere.

Q. That is, each owner stands his own damage claims, does he? A. He has to stand his own damage claims.

Q. You said you had known claims being submitted to the conference. What claims had you in mind? A. Something that would affect the policy. I have in mind one that was sent home to London. A steamer that was in Shanghai was ordered to go to Manila instead of going to Hong Kong. This was in consequence of the breakdown of the boat in advance.

Q. The turn ahead of her? A. Ahead of her. She had 913
broken down and we had to hurry this one from Yokohama and cut out Hong Kong, and sent her to Manila instead. There was cargo packed for the boat that was to have called at Hong Kong, and in order to avoid delay we arranged in Hong Kong, the conference arranged that cargo should go to Singapore by an outside vessel, by a Japanese line, and it was there transshipped to another conference steamer in Singapore, which got there about the same time as this other boat which had gone from Manila which ought to have carried cargo. In consequence of that transshipment, it was a parcel of firecrackers; it got broken about a good deal. On 914
arriving at New York, claims were made for the breakage, and, because there had been extraordinary circumstances in connection with the shipment of the cargo, they were referred to the conference in London, and the conference in London said, "Yes, this was all for the benefit of the conference, it was an outside thing, we will assume that claim," and they paid it. That was the sort of a claim that would come up before the conference in London, no other claim, no damage claims.

Q. You were asked the question about the relative cost of 915
loading in China and Japan. Your comparison, as I understand it, was based on the chartering rates of Java steamers as compared with the actual earnings of your steamers? A. Exactly so.

Q. The expense of both classes, of course, would be consumed, so to speak, in the freight rates? A. They would.

Q. That is, the expenses would be taken account of in fixing the freight rates? A. They would.

Q. But the Java trade is a large trade and has its own market, has it not? A. It has.

Q. It is limited to a few ships? A. Oh, no. 916

Q. It is not based on the fact that one ship has to go in ballast? A. No.

Q. But in point of fact, are not your steamers quite a long time in loading from the time they first begin to take on cargo until they sail for Singapore? A. A very long time sometimes.

Q. And they make voyages between ports with a small amount of cargo? A. They do.

917 Q. So that there is something at least in the way of expense to mark off against the ships to the Java trade if you want to compare expenses? A. Certainly there is.

Q. The Asiatic trade and in bulk cargo trades, the price of charter, as I have understood you, was dead weight? A. Yes.

Q. That is so a ship gets 25 shillings dead weight? A. That is what she carries.

Q. Although your freights are based on parcels, you can take the aggregate of the freights in parcels and reduce it to the same terms? A. Exactly.

918 Q. So as to find out what your ships had actually earned on their dead weight? A. It is quite a simple matter.

Q. That is what has been done here by Mr. Dermer in the second column of Defendant's Exhibit 1, is it not? A. That is it, yes, sir.

Q. So, although your ships carry parcels and Java ships carry dead weight, the comparison is between dead weight and dead weight? A. That is right.

Q. Your attention has been called to some statements that were in the first agreement, Exhibit 7 I think it is called, about the relation of the legality of rebates to the American

919 law. Had not these rates always been shippers' rebates from the beginning; the rates always have been shippers' rebates, have they not? A. I do not quite follow you.

Q. The first agreement was the shippers' rebate entirely? A. It was offered by the owners to shippers.

Q. To shippers? A. To shippers only.

Q. As I have understood it, it was a perfectly lawful thing throughout the East, except possibly in the Philippines, as to which you had no knowledge?

MR. BALDWIN: We object to his interpretation of

920 a legal matter.

A. I had doubts.

Q. And to avoid all question about that you always made your rebates to shippers in the Philippine trade rebates to British subjects, made them and distributed the circulars to British subjects in England and paid your rebates to them there?

MR. BALDWIN: I object to that as asking for a conclusion, whether they were or not. 921

A. That is so.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Dodwell, there was a gradual increase in trade, was there not, between 1901 and 1904? A. I should think there was.

Q. You have already testified that there was. That increase in trade was not in any way stimulated by the conference, was it? A. It was not. 922

Q. The only part of the trade that was stimulated by the conference was that which occurred after 1904? A. Yes.

Q. You say that you pay rebates in the Philippines? A. We do not pay rebates in the Philippines.

Q. Do you pay rebates in London for those merchants who ship from the Philippines? A. Yes, we do, in London.

Q. And where are the rebates paid for the balance of the trade? A. In Hong Kong.

Q. In Hong Kong? A. Yes, sir.

Q. Why are the Philippines rebates which have been earned, why are they paid in London? A. Because the offer is made by us to the London houses. 923

Q. And for what reason? A. To avoid complications in regard to the United States, our knowledge of the law being unknown.

Q. In order then to obviate any trouble which might arise from the construction of the American law, you devised the means of arranging for the offering of the rebates and the paying of the rebates in London? A. The making of the contracts entirely in London.

Q. You circularized then in London? A. In London.

Q. In London? A. In London. 924

Q. Any shipper, however, that ships from the Philippines to the United States by those conference steamers, in order to get a rebate, all he has to do is to make his arrangements in London for it, is that the idea? A. That is the idea.

Q. And it is done solely and purely to obviate any trouble that you think might arise from a construction of the American law? A. Exactly.

925 Q. Were not there complaints from time to time of shipments that, although they had confined their shipments to the conference lines, they were not getting the tonnage that had been promised? A. No, sir.

Q. It never happened? A. No, sir.

Q. You say that the competition with the American-Manchurian Line was not wiped out. When did the American-Manchurian Line start in business, when did it become a competitor? A. It threatened a competition.

Q. What is that? A. It had been admitted on the eastern conference.

926 Q. The eastern conference? A. And they threatened competition on the western conference unless it were admitted.

Q. Then was it admitted? A. It was admitted.

Q. Were they actually competitors to the westward before they were admitted? A. They were not.

Q. But then instead of the fact being as I understood it to be in your testimony, in answer to Mr. Kirlin's question, the competition of the Manchurian Line was still alive, that is to say, it was still active? A. That is so.

Q. Its threats were active? A. Its threats were active, there was no actual competition.

927

MR. KIRLIN: It had the means of competition?

THE WITNESS: It had the means of competition, yes, sir.

Q. That line was in agreement with those same lines on the eastward business, wasn't it?

MR. KIRLIN: I object to that unless Mr. Dodwell had personal knowledge of it.

Q. Do you know that? A. I do not know it, Mr. Baldwin; I know that it loaded its steamers from New York, but

928 whether it was under agreement with the eastern conference, I do not know; I do not know about the eastern conference; we were not interested and never have been, and all the lines in the westward conference are not in the eastward conference.

Q. Most of them? A. Most of them, but not all of them.

Q. What was the nature of the threat of the American-Manchurian Line? A. The nature of the threat?

Q. Yes? A. That they would put on sailings, if necessary twenty-four sailings a year, unless they were admitted. 979

Q. And do you remember when they were admitted? A. The 1st of January, 1911.

Q. And they have remained in the conference ever since? A. They have remained in the conference ever since.

Q. Just a moment with reference to the repacking of those bales of hemp; you remember you just testified about it? A. Yes, sir.

Q. The reason you wanted them repacked was the charge was based upon a certain number of cubic feet where actually as they were delivered they would exceed that? A. 980 Yes, sir, that was the reason.

Q. And you wanted to regulate it? A. Yes, sir.

Q. And then it was that you circularized the trade stating that they would have to arrange for the packages not to exceed ten cubic feet? A. Twelve cubic feet.

Q. And if they did they would be charged accordingly? A. They would be sent back to be repacked.

Q. To be repacked? A. Yes, sir.

Q. Did you join as a shipper in that protest? A. I am not a shipper of hemp. 981

Q. Then it was not due to your interest in that situation as merchants that led you to be active? A. No, sir.

Q. There you were simply representing the owner? A. The conference.

Q. And you did not have this dual interest? A. No, sir, there I represented the owners.

Q. The agent's commission that they get for loading is not affected by the rebates, is it? A. In no way.

Q. You get your five per cent.? A. We get our five per cent. on the gross rate.

Q. So that the payment of the 10 per cent., or the additional 5 per cent. to these Singapore merchants did not in 982 any way affect you? A. In no way; it did not affect our commission.

Q. Steamers in the Java trade go out from the United Kingdom usually, don't they? A. Most of them that go out, yes.

Q. When they are loaded with sugar what percentage of it goes to the United States, do you know? A. I do not know that.

941 Q. Has any action been taken as yet? A. Nothing as yet.

Q. It has been discussed several times? A. It has been discussed several times, but nothing has been done.

Q. But it was contemplated the situation would be met before the canal was opened, wasn't it? A. Hardly so, I think they will wait until the canal is opened before they will do anything.

Q. Mr. Dodwell, what relation has the American-Manchurian Line to this conference? A. It is one of the parties to the present agreement.

Q. To the present westward agreement? A. To the present
942 westward agreement.

Q. It is not a signatory to the agreement that has been introduced here? A. No, but it has become a party to it.

Q. By some separate agreement? A. By some separate agreement.

Q. Have you a copy of that separate agreement by which the American-Manchurian Line became a party? A. I have not got it with me.

Q. Can you get that? A. Certainly.

Q. And you will send that to Mr. Kirlin, will you? A.
943 Certainly.

Q. Can you remember about when that was done? A. It would be about the time they were admitted.

Q. Do you remember about what date that was? A. That was the American-Manchurian? I have got it; they were admitted the 1st of January, 1911.

Q. The 1st of January, 1911? A. Yes.

Q. Were they admitted to the pool arrangement at that time? A. Certainly.

Q. And a separate pool arrangement was drawn up, or an agreement collateral to the pooling agreement drawn up?
944 A. No, I think it was only a very brief agreement.

Q. An agreement including them in both your traffic and pooling agreement? A. I take it so; I do not remember the terms, but I take it so.

Q. But whatever agreements there are, you will have copies made and furnish them to Mr. Kirlin? A. Yes, sir.

Q. Do you remember how you happened to take in the American-Manchurian Line? A. They were very forceful people.

Q. They were very forceful people? A. Yes, sir.

Q. And they were operating in opposition to you, were they? A. No, they threatened to do so. 945

Q. They threatened to do so? A. They threatened if we would not admit them they would load twenty-four steamers a year. I think they were permitted to load six, my copy shows that; I entered it up, I think. I think you will find it down there.

Q. Six Manchurian, is that it? A. Six Manchurian, yes, sir.

Q. They were, however, actually operating a line independent when they were taken in? A. Outward, not homeward. 946

Q. Outward? A. Yes, sir.

Q. That is outward from the United States? A. Yes, sir.

Q. What became of their ships when they arrived out there, did they come back as tramps, or what? A. No, I think they went to Calcutta mostly and loaded there for the United States, I think so.

Q. As a part of some conference, or as tramps? A. As a part of a conference.

Q. Some other conference? A. Some other conference.

Q. Where did they go to from the United States? A. All ports; they might go to the Philippines, they might go to China, they might go to Corea, or they might go to Japan. 947

Q. And they had to go to Calcutta in ballast, is that it? A. They would probably take a coasting trip from Japan south.

Q. To Calcutta? A. Yes.

Q. And unload that? A. Yes, sir.

Q. And take a new cargo at Calcutta? A. Yes.

Q. And go back? A. Yes.

Q. Did the American-Manchurian Line go to the port of Dalny, do you know, when they were operating independently? A. I think so. 948

Q. Were they competing strongly with the conference with a cargo to Dalny? A. I do not know anything about that; that was eastward.

Q. Was the conference carrying cargo to Dalny when the American-Manchurian commenced to carry cargo there? A. I cannot say about that, I do not know.

Q. You do not know about that? A. I do not know about that.

949 Q. Is the American-Manchurian now a party to these agreements? A. It is.

Q. And now share in the pooling? A. Yes, sir.

Q. In both directions? A. I do not know about over here at all.

Q. The pooling agreement is one agreement, Mr. Dodwell? A. No, sir, I beg your pardon, the westward is absolutely separate from the eastward.

Q. It is one document that they are arranged for in? A. That may be, it is absolutely different; the interests are different, they are not the same.

950 Q. You know, however, that they do share in the westward pool still? A. The American-Manchurian?

Q. Yes? A. In the westward.

Q. And they attend the conference? A. Yes.

Q. In Hong Kong? A. Yes, sir, and in London.

Q. And co-operate in every way? A. Yes.

Q. As members of the conference? A. As members of the westward conference.

Q. As members of the westward conference? A. Yes, sir.

Q. And otherwise in the pool? A. Yes, sir.

951 Q. What their relations are eastward you do not know? A. I do not know eastward at all.

DEPOSITION CLOSED.

Adjourned subject to notice.

NEW YORK, December 3, 1913.

Met pursuant to notice.

Present—GILBERT H. MONTAGUE,
Special Examiner.

952

APPEARANCES:

(Same as before.)

MR. MONTGOMERY: We offer Petitioner's Exhibit 5 for Identification in evidence.

MR. KIRLIN: Defendants object to these rules, so far as they apply to Westward service, on the ground that they are incompetent, irrelevant and immaterial,

and that part of the rules are outside of the scope of the issues in this case. 953

IT IS STIPULATED by the parties that this Exhibit need not be printed, and that Exhibit 4 annexed to the petition is a true copy thereof.

THOMAS ASHLEY SPARKS, resumed the stand.

DIRECT EXAMINATION continued by Mr. Montgomery:

Q. Mr. Sparks, what ports in the United States are served by the defendant lines? A. New York and Boston.

Q. Has that been true throughout the period covered in this petition, that is, since 1903? A. I think occasionally they previously have gone to Baltimore, very occasionally. 954

Q. But I understand then that the service to Boston is a regular service? A. Not at all, only when there is cargo offered.

Q. Then the only regular sailings have been from New York throughout the entire period? A. I thought you said to New York.

Q. Please state it both ways? A. There are a certain number of boats westbound that come to Boston, but the regular service is to New York; eastbound the service is only from New York. 955

Q. And that has been true since 1903? A. I do not know about that, but as long as I can recollect.

Q. Since 1905, anyway? A. I could not say that, either; for quite a long period.

Q. How frequently do boats come into Boston of the Conference lines? A. I do not think I know. They have occasional boats, I do not know how often.

Q. And I understand there is no service outward from Boston? A. No.

Q. Nor from any port except New York? A. No. 956

Q. How frequently do your boats offer for outward cargo at places other than New York? A. I do not understand the question.

Q. You have stated that New York is the only port from which cargo is regularly taken by the Conference lines, that is, by regular sailings eastward. Now, how frequently do you make these occasional offerings at other ports than New York for outward cargo? A. I did not say we ever did.

957 Q. Then you never take any cargo at all from Boston or Baltimore or any of those ports? A. Not as Conference, no.

Q. I do not mean as Conference, Mr. Sparks, necessarily, but do the lines in the Conference ever take cargo from any other port than New York? A. Yes, we have three boats this year, from Tampa and Galveston, and Tampa and Savannah.

Q. What is the nature of the cargo carried in those? A. Phosphate rock and cotton.

Q. Whose boats are those? A. We handle them.

Q. That is, Funch, Edye & Company? A. Funch, Edye &
958 Company, yes.

Q. Who are the owners? A. They are chartered boats.

Q. That is, Funch, Edye & Company charter them for their account? A. It is a joint arrangement, including some of the lines but not all of them.

Q. Which ones? A. The Indra Line, Barber Lines, Watts, Watts & Company, of London.

Q. Does the Conference have to be consulted about those sailings? A. No.

Q. The only cargo carried is phosphate rock and cotton?
A. Yes; they are simply boats put on in the cotton season.
959 Some years we have them and some years we do not.

Q. And the charter is for one way? A. Yes.

Q. I understand you to say that those three sailings were this year? A. Yes.

Q. How about 1912, do you recall how many there were in 1912? A. Yes, we had one very unfortunate sailing in 1912. They packed the phosphate rock and then could not get any cotton.

Q. That was just the one? A. Yes.

Q. And in 1911? A. I do not think there were any in
960 1911. Yes, there were two in 1911.

Q. How about 1910? A. I cannot go back as far as that. I do not remember.

Q. Those boats sailed, I suppose, through the Suez Canal? A. Yes. I omitted to mention, Mr. Montgomery, this year the American-Manchurian are also running boats out of the Gulf and Savannah to Japan.

Q. Carrying phosphate rock and cotton? A. Yes.

Q. Any other commodities? A. Not that I know of.

Q. How many sailings have they had? A. They have had

one, and they advertise a regular monthly sailing from now to February. 961

Q. Then I understand they have only had one sailing thus far—the American-Manchurian? A. Yes.

Q. Outside of New York? A. Yes.

Q. And that carried phosphate rock and cotton? A. I think so; I have not seen the manifest, but I understand so.

Q. And the advertised sailings from now on of a boat a month, are they for phosphate rock and cotton? A. I think that is the purpose of it.

Q. You do not know whether or not they are offered for general cargo? A. No, I do not. 962

Q. Those boats go through the Suez Canal, do they? A. Yes.

Q. Now, Mr. Sparks, can you tell what percentage, approximately, of the cargo carried from New York to the far East is carried by the Conference Lines? A. Do you mean from the United States?

Q. From New York? A. All of it I should say except case oil.

Q. All of it except case oil? A. Yes, sir.

Q. Do you know about what percentage of the cargo moving from New York case oil would constitute? A. No, I do not. 963

Q. Practically all except case oil? A. That was the previous question.

Q. Do you know whether it would be 50 per cent.? A. It would be a mere guess on my part, Mr. Montgomery.

Q. How is case oil carried? A. In steamers.

Q. What I had in mind was, Mr. Sparks, whether it was carried by charter, chartered steamers? A. Yes, the Standard Oil Company charter their own boats.

Q. And the whole movement, almost the whole movement of case oil—or would the whole movement of case oil by the Standard Oil be in steamers they chartered? A. Some years the Conference carry case oil, too. 964

Q. What controls the question whether you carry case oil or not? A. Whether there is enough other cargo to maintain a regular and efficient service.

Q. To maintain a regular and efficient service? A. Yes, sir. If there is not enough cargo we take case oil and fill the boats.

965 Q. That is, case oil pays a lower rate than the other cargo, and the other cargo is preferred if you can get it? A. Yes. It is preferable from all points of view.

Q. That is, case oil is the least desired? A. Yes, sir.

Q. Is case oil ever transshipped, sent to Europe and ever transshipped? A. I do not understand the question.

Q. What I mean is this, the Standard Oil Company charter their steamers to go right through the Suez Canal to the Far East, don't they? A. Usually by the Cape of Good Hope.

Q. They go by the Cape of Good Hope sometimes? A.
966 Usually.

Q. They do not send it to Europe and then transship it, do they? A. Perhaps they do, but I never heard of it.

Q. Then as you carry everything except case oil, there is not much of a movement of cargo from New York via Europe by transshipment, is there? A. I do not know; I think there is.

Q. From New York? A. Yes.

Q. I understood you to say that practically all of the cargo carried from New York to the Far East is carried by your lines? A. I thought you meant by direct opportunity.

967 Q. Then you qualify that by saying some cargo was transshipped? A. Yes.

Q. Sent from New York to Europe and transshipped? A. Yes.

Q. What percentage? A. I do not know.

Q. Would you say that the conference carried 95 per cent. of the cargo moving from New York to the Far East? A. I am not going to guess at the percentages. I will say this, they carried the bulk of it.

MR. KIRLIN: You mean excluding oil?

968 THE WITNESS: We are talking about cargo, generally.

Q. You keep pretty good track, don't you, Mr. Sparks, of cargo moving to the Far East? A. In a very general way, yes.

Q. And usually if any one is shipping any amount of cargo at all, why, you and your Conference know about it, don't you? A. Not necessarily. Certainly not sufficiently closely to enable us to say what percentage.

Q. In a general way haven't you sufficient knowledge— 969
sufficient understanding and knowledge of the business to make some estimate as to what percentage you carry? A. I do not care to make an estimate.

Q. It is hardly a question of whether you care to make an estimate, Mr. Sparks, it is a question of whether you are able to. I do not want to be disagreeable about this thing? A. I do not want to be disagreeable either, Mr. Montgomery, but I am not going to estimate.

By Mr. Baldwin.

Q. Take any period you made it; when was it? A. I made 970
one for a specific period.

Q. Take any period you made it, when was it? A. I made it for a certain period, and I will be very glad to dig that up and give it to you. I haven't it here, and I do not know the figures. It covered a period of months, I think.

By Mr. Montgomery.

Q. When was that, Mr. Sparks? A. I do not remember.

Q. When did you make it? A. I do not remember; it may be seven months ago or seventeen months ago.

Q. You say you will look that up? A. And I will be very 971
glad to give it to you, but I am not going to guess at it here.

Q. Do you know whether that period for which you made the figures was fairly typical? A. I do not remember what the period was.

Q. You do not remember anything unusual about it, do you? A. No, but I can find it for you and I will give it to you.

By Mr. Baldwin.

Q. How long, Mr. Sparks, will it take you to get a fairly approximate idea of it? A. I do not hear. 972

Q. How long do you think it will take you to get just a fairly approximate idea of it so as to give your statement? A. I can give you the figures I have already made in a moment.

Q. Have you got them with you? A. No. I said I would get them for you.

By Mr. Montgomery.

Q. Just what do these figures show, Mr. Sparks, what is the nature of them?

973 MR. BURLINGHAM: We object to that. You are examining about something we do not know anything about and something within your knowledge. You ask him to tell how long it will take to get something that is not before the Court, and we do not know anything about. If it is cross-examination proper, all right.

MR. MONTGOMERY: It is not for that purpose.

MR. BURLINGHAM: We are all in the dark and you and he have some understanding about something in the past that we do not know anything about and you
974 ask how long it will take to get that information.

MR. MONTGOMERY: I want to have Mr. Sparks state in a general way the nature of the compilation he has made.

MR. KIRLIN: Get it before you; it is merely a computation.

Q. Could you get the figures or prepare figures for the entire period, Mr. Sparks, from 1903 to the present time? A. I could not.

975 Q. How much of that period could you cover? A. I do not know. I have got a small portion of it covered. Those figures I will be very glad to give you.

Q. But for the entire period or any large part of it you could not? A. No.

Q. As to this transshipment via Europe, Mr. Sparks, is that frequently done? A. Yes.

Q. How long has that been frequently done? A. I have no means of telling.

Q. Was it that way in 1911? A. I do not remember.

By Mr. Baldwin.

976 Q. Mr. Sparks, you are quite sure, are you, that this transshipment of products from New York to the Asiatic ports are matters of frequent occurrence? A. It all depends on what you call frequent occurrence, doesn't it? I see the clearances of it from time to time in the Journal of Commerce.

Q. You said a moment ago in response to Mr. Montgomery's question that it was frequently done, is that right? A. Yes, it is.

Q. And you feel quite sure that is true, do you? A. Oh, yes. 977

Q. Is your memory any clearer on that point now than it was in 1911, when you appeared before the Grand Jury? A. I do not think it is quite as clear, because I have not followed it quite as closely.

Q. You remember you testified before the Grand Jury, do you not? A. Very well, but I do not remember all the testimony.

Q. Let me just read and see whether this will refresh your recollection. Do you remember you were asked this question: 978

> "Q. Well, you could ship by way of Europe around. Is that frequently done? A. Not very much because the rates are lower direct and also there is no loss of shipment and no breakage of goods and more frequent and regular and better service."

Do you remember testifying to that effect? In 1911, your recollection perhaps was fresher than it is now, wasn't it, about whether or not it was a frequent occurrence to ship goods from New York to the Far East by way of Europe, which involved transshipment? I want to make it plain 979 because I want you to get it clear in your mind? A. I think perhaps there is a difference of terms there. You are talking about frequency and I was talking about volume of cargo, and I said they did not do it very much, but there are frequent small shipments by way of Europe.

Q. That is what I wanted to know. Then, as a matter of fact that per cent. of cargo or products shipped from New York to Asiatic ports that go by way of Europe and transshipped is relatively small? A. Relatively small, yes.

Q. Is it not true that there is an inherent objection to 980 sending goods by way of Europe because of the fact the rates by the direct route are lower, and have been? A. Yes, they usually are.

Q. And there is also a loss in shipment oftentimes due to breakage and other things if you rely on transshipment? A. Yes. That is the reason goods go by the direct route.

Q. Then two questions are involved, whether goods should go by way of Europe or transship, one is the cheaper route, and the other is the facilities are greater? A. Yes.

981 Q. You had a pretty definite recollection at the time you appeared before the Grand Jury as to the volume of business carried by the Conference lines to the Asiatic ports, didn't you? A. I do not remember.

Q. I say at that time? A. I say I do not remember whether I had or not.

Q. You could not go before the Grand Jury and testify under oath about a matter unless you were? A. I did not go voluntarily, as I remember it.

Q. That does not matter, but you would not go in response to process, would you, and make a statement as to
982 facts unless you were justified in doing it? A. I certainly testify to the best of my general belief on all occasions.

Q. Do you remember whether you were asked the per cent. of business east bound that these conference lines carry? A. No, I do not remember.

Q. You do not remember that question being put to you? A. No, I do not.

Q. Do you remember testifying, eliminating the business carried by the Trans-Continental and Pacific Route, the amount you thought was equal to 95 per cent. of the total?
983 A. I do not remember.

Q. Assuming you testified to that at that time, would that refresh your recollection in any way now so you could answer? A. It might not be true now.

Q. At the time you testified I am speaking about? A. No doubt that was my best knowledge.

Q. At that time? A. No doubt.

By Mr. Montgomery.

Q. You mentioned case oil as moving by full cargoes by the Standard Oil Company. Does steel move in that way
984 in this traffic? A. It does from time to time, not regularly but from time to time.

Q. Take 1913, for example, have there been any movements of steel outside of the Conference to the Far East? A. I could look that up for you, but I don't know; there may have been one or two boats.

Q. You do not call to mind any? A. No.

Q. You usually know the steel movements? A. I could always look it up.

Q. There would not be any except for the United States Steel Products Company, would there? A. No. 985

Q. No other shippers ship in cargo lots to the Far East? A. No.

By Mr. Baldwin.

Q. Will you get up the statistics for steel also? A. Yes. You say you want as to 1913?

Q. Yes, 1913? A. Yes, sir.

By Mr. Montgomery.

Q. When I mention steel I do not mean only from the port of New York, but I have in mind the entire Atlantic seaboard and Gulf? Could you get the figures for all that? A. I suppose I can. I can get it from the Steel Company. 986

Q. Then as to general cargo, is there any movement at all of general cargo to the Far East outside of the Conference lines from the eastern seaboard and the Gulf? A. I do not understand your question.

Q. You mentioned steel and case oil as exceptions, as being sometimes carried outside of the Conference. Now I say as to general cargo outside of those two articles, as to general cargo, would there be any movements not carried by the Conference from the eastern seaboard? I eliminate also the phosphate rock and cotton you have mentioned. I mean moving by water from the Atlantic seaboard or the Gulf eastward? A. Do you eliminate the shipments via Europe? 987

Q. I understand you to say about that that is relatively small, while perhaps there may be frequently small parcels shipped, yet in the aggregate it does not amount to much. Am I wrong about that? A. You are quite right about that.

(Last two questions were read.)

THE WITNESS: I do not know which part of the question to answer first. 988

Q. Let me ask you this question, phosphate rock and cotton and steel products and oil are all excluded from the term general cargo, are they not; they are not embraced, are they, any of them, in that term? A. No, I think not.

Q. Then are there any other articles that are not included in the term "general cargo" that move in any considerable quantities to the Far East in any manner? A. Yes, there

989 are a great many commodities that are not included as general cargo. That after all is simply a term, but it covers all kinds of merchandise for which there is no commodity rate.

Q. Perhaps I do not use the term general cargo in the same sense that you do. I mean to say those articles are shipped in cargo lots or combinations, two of them in the case of phosphate rock and cotton, to make cargo lots. Now, are there any other commodities that move in cargo lots to the Far East? A. No, only coal to Manila occasionally.

990 Q. Coal to Manila? A. Yes.

Q. And that is carried to a large extent by the Conference lines, is it not? A. No.

Q. It is to some extent? A. No, I think not at all. That is simply a charter by the government, it is all government.

Q. Then outside of those commodities, we will say oil and steel products, moving in cargo lots, phosphate rock and cotton and government coal to Manila, are there any other commodities that move in any other way than by the Conference lines to the Far East from the Atlantic coast and Gulf ports? Is that clear? A. Yes, that is quite clear.

991 Inasmuch as they furnish all the service they carry all the cargo except a small lot that goes by Europe.

Q. Do I understand, Mr. Sparks, that because your lines are the only lines that are regularly operating they furnish the only opportunities to ship to the Far East? A. Yes, outside of the full cargo lot and the shipments via Europe.

Q. Do not chartered steamers sometimes accumulate cargoes for the Far East, general cargoes? A. Not that I recollect.

Q. You do not know of that having been done? A. No.

Q. Don't they offer to do that, offer themselves on the

992 berth to carry general cargo? A. Not on the berth.

Q. They do not do that? A. No; just full cargo.

Q. They carry full cargo? A. Yes.

Q. Why wouldn't they appear on the berth to accumulate general cargo? A. For this reason, when an owner had once bound himself to carry a 100 ton lot he would have to go whether he had a full cargo or not, and no one would take such a foolish risk.

Q. That would be so in all trades, would it not? A. That is the business of the liner.

Q. And it is not practical business for the chartered steamer to engage in, is it? A. It could only be done through an intermediary, a loading broker or merchants. 993

Q. Why could not the loading broker do it in this trade? A. They could do it in all sorts of trades.

Q. Do they do it in this trade? A. These lines have been formed on the ashes of the loading brokers.

Q. A shipment is sometimes made around the Cape of Good Hope, is that right? A. Of case oil.

Q. Case oil only? A. And coal. Any full cargo lots are apt to go that way.

Q. The Conference lines sometimes send ships around that way, don't they? A. I have an indistinct recollection we did once for some specific reason, but I cannot recall what it was or when it was, but that is not the usual performance. 994

Q. If a shipment is made around the Cape of Good Hope by the Conference lines, that is still within the Conference agreement, isn't it? A. Certainly.

Q. And is Conference business? A. Certainly.

Q. The same as though it goes by the Suez? A. Certainly.

Q. And there is no independent line operating via the Cape of Good Hope, or anything of that kind? A. No. 995

Q. Nothing but full cargo lots? A. No.

Q. Do you know whether or not any cargo moves from the Atlantic coast to Galveston, Texas, and thence by rail to the Pacific coast and then across the Pacific? A. I believe so.

Q. What kind of cargo goes that way? A. I think all kinds of cargo.

Q. Originating at what points? A. I cannot tell you. It is not our line, you know.

Q. It has not been sufficiently competitive with your line so that you have looked into it to any extent? A. I do not understand what you mean. 996

Q. I mean that route that I mention does not draw from your territory in the eastern part of the United States to such an extent that you have found it something to watch? A. That route is simply a water connection of a trans-continental system, and as such in our minds is always connected with the trans-continental movement of freight.

Q. Well, how do the rates compare with the trans-continental shipment by all rail from here to San Francisco, for

997 example? A. I do not know about the local rates to San Francisco.

Q. Do you know whether this route is approximately the same in the matter of expense as the Pacific route in the matter of rates? A. This is the Pacific route.

Q. And the rates would be about the same? A. As far as I know, yes.

Q. And the Pacific route rates, involving that long rail haul, as they do, are higher than the route by water from New York, are they not? A. Wherever we can make them competitive we try and see that our rate is not higher than
998 our rate plus the inland rate from the point of origin to the Atlantic seaboard, is not higher than the through rate of the trans-continental systems.

Q. I take it then you mean for as wide a territory back from the Atlantic as you are able to accomplish that you do it? A. Yes.

Q. What is the dividing line? A. There is no dividing line. It depends upon the density of the cargo.

Q. What is the farthest point from which you can successfully compete with the Pacific lines? A. Well, that is very hard to say. They take freight out of Elizabethport, and we
999 take freight out of St. Louis, so it is pretty hard to say where the dividing line comes. They take freight from there across the Pacific, and we take freight from St. Louis.

Q. That would be a higher class of cargo, wouldn't it, in which the saving of interest would be quite a factor? A. I do not know what the interest is.

Q. What is that particular matter? A. That particular lot was Singer sewing machines.

Q. Does that often occur, that they carried Singer sewing machines? A. They did for a good many years, but I do not
1000 know what it is now.

Q. You do now, don't you? A. I do not know whether we do or not.

Q. You have contracts with the Singer Sewing Machine Company for all of their cargo, haven't you? A. Not that I know of. We may have at the present time, but not that I know of.

Q. Where can we find out about that, Mr. Sparks? A. Mr. Goodwin will be very glad to tell you.

Q. You do not carry cargo any further west than St. Louis? A. I dare say we do, Mr. Montgomery, but I just mentioned St. Louis. I am not very well acquainted with the point of origin of the cargo that we carry on our ships. 1001

Q. Mr. Sparks, there is a conference of the lines maintained at New York, is there not, with periodical meetings? A. There are meetings of the agents of the Conference lines in New York. Is that what you mean?

Q. Yes, how frequently do they meet? A. Once a week.

Q. Where? A. I testified when I was here before that they are held every three months at the different offices, taking the agents in turn. 1002

Q. You say "agents," but those conferences are attended, are they not, by some of the owners, that is, the American-Asiatic Steamship representative would be the owner? A. Yes, but I think the meetings are held in Shewan, Tomes & Company's offices; that is my recollection. It is simply an agents' meeting in any event.

Q. Mr. Barber attends? A. Yes.

Q. He would be an owner? A. Yes, in a way.

Q. At those conferences all the lines are represented, are they not? A. All except the American-Manchurian line.

Q. That has been so all through this period, has it not? 1008
A. No; they came at one time.

Q. I mean to say it has been true all the lines except that have been represented? A. No, they came part of the time.

Q. All the lines have been represented except the American-Manchurian all the time, and the American-Manchurian part of the time? A. That is right.

Q. During what period were they represented? A. I do not remember.

Q. Do you remember who represented them at the meetings? A. Yes. I testified to all that before. Mr. Lilly and Mr. Skeff Norton. 1004

Q. Just state what the business transacted at those weekly meetings has been?

MR. BURLINGHAM: He has testified to that already.

THE WITNESS: It begins at about page 8, Mr. Montgomery.

MR. BALDWIN: But not about the minutes.

1005 THE WITNESS: It goes on again at page 11, Mr. Baldwin.

MR. BURLINGHAM: I do not believe I am right; I do not think you have asked about it.

MR. BALDWIN: I do not think it has been given in this case, Mr. Sparks.

Q. Who attends for your line? A. I do and Mr. Goodwin.

Q. Throughout the period who else has been there representing the United States & China-Japan Line? A. My partner, Mr. Gottheil, at one time, assisted by Mr. Betts.

1006 Q. And the American-Oriental Line? A. Mr. Boyd and Mr. Sewell, and various assistants from time to time.

Q. And the Barber Line? A. Mr. Herbert Barber and Mr. James Barber and Mr. Hautman and one of the young Barbers.

Q. And the American Asiatic Line? A. They have had various representatives. I represented them once, and Mr. McMurtrie and Mr. Blake in that order.

Q. Has this Conference established the rates of freight to be charged in the outward direction? A. Yes.

Q. And published or printed a compilation of those rates?

1007 A. Yes.

Q. And any modification in those rates charged by any of the lines has been made by the joint action of the New York Conference? A. Yes.

Q. This printed schedule of rates is not published, is it, in the sense of its being handed to the shippers? A. No.

Q. It is retained by the agents for their own guidance in quoting? A. Yes.

Q. The Conference has from time to time taken up the question of contracts and authorized the making of contracts with individual shippers, has it? A. Certainly.

1008 Q. And those contracts when made are for the carriage of all of the shippers' freight by the Conference lines, are they not? A. Yes, sir. I have no doubt but some of the contracts read that way.

Q. Don't they all? A. No, a lot of them are for specific quantities.

Q. A lot of them are for specific quantities? A. Yes.

Q. But all the time contracts would be for all the shipments of that shipper? A. Yes, I suppose so.

Q. Are all the contracts reported in the minutes of the meetings that have been produced here, Mr. Sparks, or are there some not reported in the minutes? A. All of them reported unless left out by accident; I think you will find they are all reported. 1009

Q. These contracts that you make, do they require the shipper to pay the tariff rate of freight, that is, the rate named in your compilation of rates? A. I think usually there is a special rate when a contract is made.

Q. By the way, this is a copy, is it not, this book that I show you is a copy of a tariff? A. It is a copy of a tariff, but whether it is the one in force now I have very much doubt. 1010

MR. MONTGOMERY: I will ask to have this marked for identification.

Marked Petitioner's Exhibit 16 for Identification.

Q. I notice that is dated January 1, 1910. Do you know whether there has been another revision since then printed? A. I do not know whether anything has been printed since then, but the tariff must have been changed a good deal since that day.

Q. I notice this Exhibit 16 for Identification has a number of alterations in lead pencil showing that these rates have been altered from time to time? A. That is probably an office copy. 1011

Q. You say that usually a discount is made from the tariff rate when you made a contract for all of the shipments shipped for a time. Is it also true you make a discount where you contract for the shipment of a specific quantity of goods? A. Not necessarily at all.

Q. That does not always happen? A. No, not by any manner of means. 1012

Q. In the case of the time contract, about what percentage of discount is offered the shipper? A. There is no percentage.

Q. No specific percentage? A. No.

Q. What controls the question of how much discount you will offer the shipper for his contract? A. It is usually how much the shipper will pay.

Q. How much you can get? A. Yes.

Q. About how do those percentages of discount run, Mr. Sparks? A. There is no percentage.

1013 Q. I understand there is no percentage used as a basis, but where a discount is made of course it is some percentage from the tariff rate. About what would they amount to? A. I have no way of telling it without looking them all up.

Q. You do not know in any case how much the discount is from the tariff rate? A. No, I have no idea. As a matter of fact we have very few of such contracts. The only one I have any recollection of now is one for lubricating oil, and I have no idea what the difference in the contract rate is.

MR. BALDWIN: Was that for a certain period of
1014 time?

THE WITNESS: That was for a certain period of time and has been renewed, I suppose.

Q. Between what companies, Mr. Sparks? A. The Standard Oil Company and the Vacuum Oil C[illegible]y.

Q. You could tell, of course, from the [illegible]and the tariff; you know what the tariff is? A [illegible]ified I do not know what the tariff rate is.

Q. You can ascertain? A. Very e[illegible] freight man would be able to tell you all those th[illegible]

Q. Who is that? A. Mr. Goodwin.

1015 Q. I have not those contracts before me, Mr. Sparks. Mr. Sparks, in addition to making these time contracts and making a discount in favor of the shipper, who is a party to the time contract, do you also make rates based upon the locality in which the freight originates? A. We have had to do that occasionally in relation to trans-continental competition. That would be the only thing that would guide us in a matter like that.

Q. Where that is done, do I understand you would make a lower rate, for instance, on say automobiles originating
1016 at Detroit than on automobiles originating at Peekskill? A. We did that at one time—you are no doubt quoting from some of our records—and that was done for the purpose of getting the cargo away from trans-continental competition.

Q. When was that policy abandoned, Mr. Sparks? A. Why, I do not know that it was ever definitely abandoned. I think the automobile rate was changed. So far as my knowledge goes now it is the same no matter where the automobile comes from.

Q. Is that the same on all articles? A. I think so, yes. 1017

Q. You do not mean to be understood, do you, Mr. Sparks, as saying that the competition of the Pacific route was the only reason for your making these differentials? A. Yes, that is my recollection.

Q. Do you recollect in March, 1910, that a rate was made on flannels in cases from southern mill points? A. I do not remember that particular occasion. I know we had a rate on flannels from southern mill points.

Q. I call your attention to this minute of March 22, 1910, and ask you if it is a copy of the minutes of the meeting of that date (handing minutes to witness)? A. I take it 1018 it is so. I furnished these, didn't I?

Q. Yes. I call your attention to this paragraph: "It has also been agreed that the rate on flannels in cases from southern mill points shall be reduced to 75 cents 100 pounds, the rate on many originating at eastern points remaining 97½ cents as at present." A. Did you read the whole of the minute?

Q. That is the whole of the minute relating to flannels. Another part of it appears to relate to cotton domestics. Now I ask you, Mr. Sparks, if the flannels originating at 1019 southern mill points would be any more subject to competition of the trans-Pacific than flannels originating in the eastern district? A. Very much more subject to competition. If you like I will explain why. Merchants in New York buy cotton flannels f. o. b. steamer New York with a certain return of the railroad rate from the point of origin to New York if they take delivery of the goods at the mill and ship them via the trans-Pacific route. The inland rate from the eastern mill point is 15 or 16 cents a hundred pounds, and the inland rate from the southern point to New York is twice or three times. Therefore the advantage to the shipper 1020 is very much more on the southern product by shipping overland than it is on the eastern product, and therefore a very much greater advantage to the trans-continental route in soliciting that particular freight.

Q. The rate for shipments from the eastern points via the Pacific route would not be any less or not greater than the shipment from the south, would it, via the Pacific? A. I am not positive that it is the same, but I think it is the same.

1021 Q. There would not, of course, be any difference in the cost to you of carrying the southern stuff than the eastern stuff? A. No, none whatever.

Q. You have nothing to do with the rail rate? A. Except, I believe, in neither case do we get the cost price out of the goods.

Q. In neither case do you get the cost? A. If it is coming down to a question of hauling, that would be a very intricate point to argue.

Q. I call your attention to these minutes of September 13,
1022 1910, on the automobiles originating at Detroit. I will read this paragraph from the minute of September 13, 1910, the minutes of the New York Conference: "It was agreed to make a special rate on shipment of automobiles that emanate from the Middle West (Detroit and the immediate vicinity). Rate agreed upon was $7.50 no bonus, for automobiles not exceeding one ton in weight." I ask you, Mr. Sparks, if you can recall first whether that was a rate on one shipment—I notice the minute reads "on shipment"—or whether it was a rate established for shipments of automobiles originating in that territory generally? A. Yes, I imagine quite gen-
1023 erally.

Q. Do you know what the departure from the going rate on automobiles was? A. I think it was caused by a low rate put in by the Chicago, Milwaukee & St. Paul Railroad.

Q. I do not mean that, Mr. Sparks, I mean the amount of the differential or reduction; in other words, what you were at that time charging on automobiles, what had you been charging on automobiles originating at Detroit? A. I have no idea what the tariff shows the automobile rate to have been at that time.

Q. I notice that this Exhibit 16 for Identification has not
1024 automobiles printed as an article, but in pencil the following: "Automobiles (around Detroit) 3,000 to 6,000 pounds, $8.25." That is right, isn't it (handing exhibit to witness)? A. Yes.

Q. You do not know when that entry was made, do you? A. No.

Q. You do not know what the rate on automobiles generally was? A. No, I do not.

MR. BALDWIN: Can you refresh your recollection from that, Mr. Sparks?

THE WITNESS: No, it does not say anything at all; simply a pencil addition there. I do not know when it was put in. 1025

MR. BALDWIN: I suppose you can ascertain that?

THE WITNESS: Yes, certainly.

MR. MONTGOMERY: What the rate was on this date, September 13, 1910.

THE WITNESS: Yes.

Q. I notice, however, that the minutes of September 20, 1910, one week, apparently, later, read as follows: "It was agreed to make rate on automobiles originating in the Middle West (around Detroit) weighing around 3,000 pounds up to 6,000 pounds $8.25 no bonus." So that is not a change, it is on a different weight, and the other is up to 6,000? A. Putting two and two together it is quite evident that pencil memorandum was put in after this minute which has just been read and the other was never copied into the tariff. 1026

Q. Do you know whether you were carrying automobiles originating at other points at that time? A. No, I do not; I do not know whether we were carrying any automobiles at all. 1027

MR. MONTGOMERY: I will read in evidence an extract from the minutes of June 14, 1910, as follows:

"QUOTATIONS.

"It was agreed to quote a net rate of $6.00 per 40 cu. ft. on about 200 tons Flour Milling Machinery for Japan, originating at Indianapolis; overland rate 86½c. per 100 lbs., inland rate Indianapolis to New York 28c. per 100 lbs."

MR. MONTGOMERY: I will read in evidence an extract from the minutes of April 4, 1911, as follows: 1028

"RATES IN CENTS PER 100 LBS. ESTABLISHED.

MACHINERY.

Buffalo, N. Y.

Carload Lots, 65c. per 100 lbs.

(Through rate overland 90c.—75c. plus 15c. Rate from Buffalo to New York 16c.)

1029 Less Carload Lots (Cons. Cars K. D.) $1.14 per 100 lbs.
(Through rate overland $1.14—75c. plus 39c. Rate from Buffalo to New York 33c.)

Cleveland, Ohio.

Carload Lots, 65c. per 100 lbs.
(Through rate overland 90c.—75c. plus 15c. Rate from Cleveland to New York 21½c.)
Less Carload Lots (Cons. Cars K. D.) $1.10 per 100 lbs.
(Through rate overland $1.10—75c. plus 35c. Rate from Cleveland to New York 46c.)

1030

Canton, Ohio.

Carload Lots, 65c. per 100 lbs.
(Through rate overland 90c.—75c. plus 15c. Rate from Canton to New York 21½c.)
Less Carload Lots (Cons. Cars K. D.) $1.10.
(Through rate overland $1.10—75c. plus 35c. Rate from Canton to New York 46c.)

Defiance, Ohio.

1081 Carload Lots, 65c. per 100 lbs.
(Through rate overland 87c.—75c. plus 12c. Rate from Defiance to New York 25½c.)
Less Carload Lots (Cons. Cars K. D.) $1.03 per 100 lbs.
(Through rate overland $1.03—75c. plus 28½c. Rate from Defiance to New York 55c.)

Columbus, Ohio.

Carload Lots, 65c. per 100 lbs.
(Through rate overland 90c.—75c. plus 15c. Rate from Columbus to New York 23c.)
1082 Less Carload Lots (Cons. Cars K. D.) $1.10 per 100 lbs.
(Through rate overland $1.10—75c. plus 35c. Rate from Columbus to New York 50c.)

Cincinnati, Ohio.

Carload Lots, 66c. per 100 lbs.
(Through rate overland 90c.—75c. plus 15c. Rate from Cincinnati to New York 26c.)
Less Carload Lots (Cons. Cars K. D.) $1.09 per 100 lbs.
(Through rate overland $1.09—75c. plus 34c. Rate from Cincinnati to New York 56½c.)

Sandusky, Ohio. 1033

Carload Lots, 65c. per 100 lbs.
(Through rate overland 90c.—75c. plus 15c. Rate from Sandusky to New York 23½c.)
Less Carload Lots (Cons. Cars K. D.) $1.09 per 100 lbs.
(Through rate overland $1.09—75c. plus 34c. Rate from Sandusky to New York 50½c.)

Hamilton, Ohio.

Carload Lots, 66c. per 100 lbs.
(Through rate overland 89c.—75c. plus 14c. Rate from Hamilton to New York 26c.) 1034
Less Carload Lots (Cons. Cars K. D.) $1.08 per 100 lbs.
(Through rate overland $1.08—75c. plus 33c. Rate from Hamilton to New York 56½c.)

Lancaster, Pa.

Carload Lots, 78c. per 100 lbs.
(Through rate overland $1.03—75c. plus 28c. Rate from Lancaster to New York 15c.)

Allentown, Pa.

1035

Carload Lots, 78c. per 100 lbs.
(Through rate overland $1.03—75c. plus 28c. Rate from Allentown to New York 13c.)

Wilmington, Del.

Carload Lots, 78c. per 100 lbs.
(Through rate overland $1.03—75c. plus 28c. Rate from Wilmington to New York 12c.)

Milwaukee, Wis.

Carload Lots, 70c. per 100 lbs. 1036
(Through rate overland 75c. per 100 lbs. Rate from Milwaukee to New York 30c.)

Connersville, Ind.

Carload Lots, 68c. per 100 lbs.
(Through rate overland 89c.—75c. plus 14c. Rate from Connersville to New York 28c.)
Less Carload Lots (Cons. Cars K. D.) $1.08 per 100 lbs.
(Through rate overland $1.08—75c. plus 33c. Rate from Connersville to New York 60½c.)

1037 *Three Rivers, Mich.*

Carload Lots, 69c. per 100 lbs.
(Through rate overland 85½c.—75c. plus 10½c. Rate from Three Rivers to New York 29c.)
Less Carload Lots (Cons. Cars K. D.) $1.02½.
(Through rate overland $1.00—75c. plus 25c. Rate from Three Rivers to New York 62½c.)

Painted Post, N. Y.

Carload Lots, 71c. per 100 lbs.
1038 (Through rate overland 96c.—75c. plus 21c. Rate from Painted Post to New York 15c.)
Less Carload Lots (Cons. Cars K. D.) $1.21 per 100 lbs.
(Through rate overland $1.21—75c. plus 46c. Rate from Painted Post to New York 30c.)

Athens, Pa.

Carload Lots, 71c. per 100 lbs.
(Through rate overland 96c.—75c. plus 21c. Rate from Athens to New York 15c.)
Less Carload Lots (Cons. Cars K. D.) $1.21 per 100 lbs.
1039 (Through rate overland $1.21—75c. plus 46c. Rate from Athens to New York 30c.)

Philipsburg, Pa.

Carload Lots, 78c. per 100 lbs.
(Through rate overland $1.03—75c. plus 28c. Rate from Philipsburg to New York 9½c.)
Less Carload Lots (Cons. Cars K. D.) $1.34 per 100 lbs.
(Through rate overland $1.34—75c. plus 59c. Rate from Philipsburg to New York 15c.)

1040 *Easton, Pa.*

Carload Lots, 78c. per 100 lbs.
(Through rate overland $1.03—75c. plus 28c. Rate from Easton to New York 9½c.)
Less Carload Lots (Cons. Cars K. D.) $1.34 per 100 lbs.
(Through rate overland $1.34—75c. plus 59c. Rate from Easton to New York 15c.)

LIFT SCALE on pieces in excess of 10,000 pounds to generally apply on all through rates quoted:

10,000/15,000 lbs.	17c.	per	100	lbs.	additional	1041
15,000/20,000 "	27c.	"	"	"	"	
20,000/30,000 "	42c.	"	"	"	"	
30,000/40,000 "	67c.	"	"	"	"	

BEER.

Milwaukee, Wis.

Carload Lots, 75c. per 100 lbs.
(Through rate overland $1.00. Rate from Milwaukee to New York 30c.)

STEAM RADIATORS. 1042

Detroit, Mich.

Carload Lots, 63c. per 100 lbs.
(Through rate overland 88c.—75c. plus 13c. Rate from Detroit to New York 23c.)

INSULATORS.

Pittsburg, Pa.

Carload Lots, 68c. per 100 lbs.
(Through rate overland 93c.—75c. plus 18c. Rate from Pittsburg to New York 18c.)

1043

AUTOMOBILES.

Referring to Minutes of March 21st, the Less Carload inland rates from points mentioned to New York are as follows:

Auburn, Ill.	131.25c.	per	100	lbs.
Detroit, Mich.	87.75c.	"	"	"
Chicago, Ill.	112.50c.	"	"	"
Flint, Mich.	103.50c.	"	"	"

MR. MONTGOMERY: I will read in evidence an extract from the minutes of April 11, 1911, as follows: 1044

"RATES IN CENTS PER 100 LBS. ESTABLISHED.

LOCOMOTIVES.

Lima, Ohio—Moji, Japan.

Carload Lots, 80c. per 100 lbs.
(Through rate overland $1.00. Rate from Lima to New York 28c.)

1045 ACETATE OF LIME IN BAGS.

Detroit, Michigan.

Carload Lots, 64c. per 100 lbs.
(Through rate overland 70c. Rate from Detroit to New York 23½c.)

ELECTRIC FANS.

Pittsburg, Pa.

Carload Lots, 80c. per 100 lbs.
1046 (Through rate overland $1.05—75c. plus 30c. Rate from Pittsburg to New York 30c.)
Less Carload Lots (Cons. Cars, K. D.) $1.20 per 100 lbs.
(Through rate overland $1.20—75c. plus 45c. Rate from Pittsburg to New York 45c.)

ELECTRIC MOTORS.

Pittsburg, Pa.

Carload Lots, 68c. per 100 lbs.
(Through rate overland 93c.—75c. plus 18c. Rate from Pittsburg to New York 18c.)
1047 Less Carload Lots (Cons. Cars K. D.) $1.20 per 100 lbs.
(Through rate overland $1.20—75c. plus 45c. Rate from Pittsburg to New York 45c.)

MACHINERY.

Waynesboro, Pa.

Carload Lots, 77c. per 100 lbs.
(Through rate overland $1.02—75c. plus 27c. Rate from Waynesboro to New York 17c.)"

1048 MR. MONTGOMERY: I will read in evidence an extract from the minutes of Sept. 12, 1911, as follows:

"RATES OF FREIGHT.

It was agreed to quote a rate of $6.00 per ton of 40 cu. ft. on shipments of Filing Cabinets, etc., which originates in Cincinnati from the Globe-Wernicke Co."

Q. Mr. Sparks, as to the rebates, have the lines in the Conference ever paid rebates to shippers in the eastward direction in return for exclusive support of the Conference lines?

A. They paid a 10 per cent. bonus which was ostensibly for exclusive support, but it was paid whether the shippers supported the lines or not to all shippers. 1049

MR. KIRLIN: When was that?

THE WITNESS: I do not know; 1905 to 1908, something like that; I do not remember.

MR. KIRLIN: Nothing of recent years?

THE WITNESS: No, a long time ago.

Q. I call your attention to Exhibit 1 for Identification, dated December 15, 1904, Mr. Sparks, which appears to be a notice issued by the United States & China-Japan Steamship Line, and ask you if that is not the circular issued by the United States & China-Japan Steamship Line offering to pay rebates or bonuses in return for exclusive support (handing exhibit to witness)? A. Yes. 1050

Q. And that is the only one issued, Mr. Sparks? A. So far as I know.

Q. And that was continued up to what time? A. Either December, 1910, or January, 1911; even now I am not absolutely certain of the month, but that is about the period.

Q. Do you remember why that was abandoned, Mr. Sparks? A. Well, I think probably the main reason was to effect an advance in freight rates, which was very badly needed. 1051

Q. That is to say, when you stopped giving the 10 per cent. bonus that automatically raised the rates by that amount? A. Certainly; it was a discontinuance of a voluntary return that the owners could no longer afford to give.

Q. You still continued to make discounts in contracts to large shippers for their exclusive support, didn't you? A. Where the contract appears to be worth making, yes.

Q. That method has rather increased, has it not, since the abandonment of the rebate, Mr. Sparks? A. No, not at all. 1052

MR. MONTGOMERY: I offer Petitioner's Exhibit 1 for Identification in evidence.

Marked Petitioner's Exhibit 1.

Q. You say, Mr. Sparks, in reference to those rebates they were paid to shippers regardless of whether they had confined their shipments to the line? A. Yes.

Q. You never announced to them in advance, did you, that

1053 you would pay this 10 per cent. rebate regardless of whether they confined their shipments to you in advance? A. No.

Q. You mean after the fact you paid them anyhow? A. Yes, that is right.

Q. As a matter of fact, there were not very many instances in which shippers did not confine themselves to those terms, were there? A. Yes, there was the very specific and serious case of the American-Manchurian Line. They were not originally parties to that circular, and when their boats were put on it was considered by the Conference lines as a violation of that circular, but the shippers who shipped by the
1054 American-Manchurian Line received their conference rebates just the same.

Q. That was the result of an agreement with the American-Manchurian Line, was it not? A. It was not.

Q. Have you a copy of the agreement which was made with the American-Manchurian Line and the Conference? A. I do not think so.

Q. Do you know where one can be obtained?

MR. BALDWIN: I think Mr. Dodwell was to furnish it.

1055 Adjourned to Friday, December 5, 1913, at 10:30 o'clock, A. M.

NEW YORK, December 5, 1913.

Met pursuant to adjournment.

Present—GILBERT H. MONTAGUE,
Special Examiner.

APPEARANCES:

1056 (Same as before.)

THOMAS ASHLEY SPARKS, resumed the stand.

DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Sparks, you were asked the day before yesterday as to the volume of the business that went from the Atlantic ports to the Asiatic ports in the steamers or boats of the Conference lines, and what that volume was as compared

with the whole volume; is that right? A. I have brought the 1057
estimate which I told you the day before yesterday I had made up to cover a certain period. That period proves to be from October, 1911, to May, 1912.

Q. You have not been able to ascertain the figures showing the volume that I am asking for for any other period, either before or since? A. No.

Q. Is that because of lack of time or facility? A. Both, and inclination.

Q. You mean to say you did not want to do it, is that it? A. I did not have time to do it, it is impossible. These eight months have taken me a week to do. 1058

MR. SPOONER: You do not mean inclination, do you? You would have done it if you could, wouldn't you?

THE WITNESS: It has been impossible, that is what I mean.

Q. Mr. Sparks, have you any objection to giving us the facilities to find what is the volume? A. None whatever, very glad indeed.

Q. Go ahead then. Did you find for that period the volume of this business that I have asked for, what it amounts to? A. You want the summary? 1059

Q. Yes? A. I can give you no idea of the volume of traffic via Europe in tons, but estimating the Pacific steamers as carrying only 4,000 tons each, which is probably considerably under what they did actually take, we find the following calculation: Case oil carried in steamers other than those of Conference lines—

Q. Mr. Sparks, I have not asked for that? A. You have asked me for the calculation that I made up, the estimate that I made up, and I will be very glad to give it to you, and here it is (handing paper).

Q. I ask you what the volume was, and you can state what 1060
the per cent. was without going into these figures? A. It is quite impossible. I have to show you how I make up my figures.

Q. Will you allow me to see it? I asked you before, and you seem to have some reluctance about it? A. No, I have no reluctance whatever. You asked if I would bring some figures, and I said yes, and I have brought them, and there they are. If you want something else, tell me so.

1061 Q. I may have to ask you something because you may have misunderstood Mr. Montgomery. Eliminating the business that goes by way of the Pacific coast, what percentage of the business to the Asiatic ports from the Atlantic ports is carried in the ships of the Conference lines? A. I can only answer that for the period from October, 1911, to May, 1912, for which I made an estimate.

Q. You see I have eliminated that entirely? A. What else are you eliminating?

Q. I eliminate nothing else unless it is the shipments that do not go by the Suez, but go by way of the continent of Eu-
1062 rope and are transshipped. If you have any knowledge of that you can frame your answer so as to meet the question with that also eliminated. Eliminating the business that goes by way of the Pacific coast, what percentage of the business to the Asiatic ports from the Atlantic ports is carried in the ships of the Conference lines? A. For the period I have mentioned my estimate shows that 37½ per cent. went by steamers of the defendant lines, and 62½ per cent. by outside steamers.

Q. You testified before the Grand Jury in 1911, didn't you,
1063 concerning that per cent.? A. I do not recollect.

Q. Do you remember whether this question was put to you:

"Q. What percentage of the business eastward do these lines that you have mentioned, the Conference lines, handle or transport? A. Do you eliminate the Pacific coast?

"Q. Yes, eliminate them for the purpose of answering my question? A. I think most of it.

"Q. 80 per cent.? A. I should think more, much more.

"Q. 95 per cent.? A. I should think so, yes."

1064

Do you remember those questions being put to you? A. I do not recollect, but it is quite evident we were talking about general cargo from New York.

Q. Very well. Is it your recollection, Mr. Sparks, that anything was said limiting it to general cargo? A. I have told you I do not recollect. I have had no opportunity of refreshing my memory as to what took place for some two years and a half.

Q. You recognize, do you not, that the question put to you before the Grand Jury eliminates only the trans-Pacific coast trade? A. I have not read the rest of the contents. 1065

Q. You notice the question I put to you indicates that, don't you? A. Yes.

Q. Does that in any way refresh your recollection as to whether the figures you gave then are correct? A. It is quite evident I was talking about general cargo, and those figures would still be correct.

Q. Then for the purpose of getting at a per cent. of 95 per cent., as you testified then, what else would you eliminate—anything? A. I do not understand the question. 1066

Q. If you testified, as it appears you did, before the Grand Jury that 95 per cent. would be the percentage of the cargoes carried by the Conference lines by way of the Suez Canal of all the business, rather, to the Orient, eliminating the Pacific lines, that you at that time thought it meant entirely the general cargo? A. Yes, I was talking only of shipments from New York.

Q. Now, supposing that you eliminate the trans-Pacific and the oil in cargo lots, coal in cargo lots, steel in cargo lots, phosphate rock and cotton in cargo lots, then what percentage did the Conference carry during that period? A. I have no figures, but I should think that would be correct. 1067

Q. What, 95 per cent.? A. Fully 95 per cent.

Q. Mr. Montgomery asked you the day before yesterday about the list of outside sailings? A. Outside steamers carrying steel?

Q. Yes. Have you got those? A. I have.

Q. Will you let me look at them? A. Yes (handing paper to Mr. Baldwin).

Q. You have produced the list, have you? A. I have just given it to you. 1068

Q. You produce it for the period of 1912 and 1913 down to September 25, is that right? A. That is the period for which it was asked.

Q. Giving the dates of the sailings and the names of the boats? A. Yes. It reads as follows:

Vennachar	Feb. 7th	(1912)
Indian Monarch	Feb. 8th	
Westminster	Feb. 16th	

1069	Colia	Feb. 20th
	Indraghiri	April 1st
	Strathclyde	April 10th
	Knight Templar	April 26th
	Lord Cromer	May 7th
	Indrasamha	June 23rd
	Glenshiel	July 18th
	August	July 24th
	Indrakuala	August 6th
	Lothian	Sept. 5th
	Indrawadi	Nov. 5th
1070	Braemar	Nov. 28th
	Lennox	Dec. 5th
	Craigina	Dec. 16th
	Indrasamha	Jan. 1st (1913)
	Vennachar	Aug. 7th
	Tavian	Sept. 25th

Q. Mr. Sparks, you were asked to ascertain the open rate for automobiles September 13, 1910. Have you been able to ascertain that? A. There is apparently in our tariff no mention of a rate on automobiles, and my best recollection
1071 therefore is that automobiles took the general cargo rate, which at that time was thirty-seven and six pence to China, Japan, and Straits ports, and nine dollars to Manila.

Q. Thirty-seven and six pence and nine dollars for what? A. Per ton. Perhaps I ought to say, Mr. Baldwin, that would be with a bonus of 10 per cent. off at that time.

Q. You mean your generally quoted price would be with the bonus off? A. Yes, nine dollars you see would bring it down to eight dollars and ten cents.

Q. You state that you have no printed tariff showing that rate at that time, but you think you charge the same rate
1072 as the general tariff? A. Yes.

Q. From what source do you get that information? A. From the tariff itself, which has an item for general cargo not otherwise specified, and which does not specify automobiles.

Q. Did you look to see any of your contracts to know from them whether you could ascertain it? A. No, I did not, but I do not think there were any contracts of that kind.

Q. Mr. Sparks, you have got before you there, or did have the other day—turn to that Eastward Agreement, at page 27. You are familiar with that Exhibit 1 of the petition in this case, are you not, Mr. Sparks? A. I have been fairly familiar with it. I have not seen it for some time. 1073

Q. It is under this same exhibit, the Eastward Agreement, that the eastward business had been done and is being done at the present time? A. Yes.

Q. Ever since the date of it? A. Yes.

Q. I think the date was 1904 or 1905? A. Either 1904 or 1905, I do not know which.

Q. You will notice in paragraph 1 there, there are 41 sailings provided for? A. Yes. 1074

Q. Do you know whether or not the same number of sailings are maintained from the time that the contract was entered into or the agreement was entered into? A. I think the number of sailings has varied from year to year. The ratio of the turns taken by each principal, however, is always based upon 13/41sts or 8/41sts or 7/41sts, as the case may be.

Q. Who arranged for the variation in the number of sailings that each line was entitled to—by conference or in conference? A. The sailings that are to be taken up by each firm are arranged in London by the principals there, but if the agents were to call for more steamers or to say that less steamers were required, the principals would make up their schedule on those recommendations. 1075

Q. It says here that no other sailings can be admitted without the consent of two-thirds of the principals? A. That means the sailings of other lines.

Q. So that even the variation of the sailings that each line is entitled to that was arranged in London and not by the Conference agents? A. Yes. 1076

Q. It says here in the same paragraph that the sailings allotted to each of the principals to be distributed as nearly as possible at regular intervals during the twelve months, and the order of taking the berth shall be mutually arranged by the agents in New York? A. I see it does, but that is evidently a dead letter, because I cannot remember when the agents ever did arrange that. It has been done so long in London anyhow.

1077 Q. I suppose there has been since this agreement was entered into a frequent change in the rates to be charged for the commodities? A. Yes.

Q. Has that always been done by the Conference here? A. I think always except in the case of steel rates, some of which have been agreed on in London.

Q. Has that been the result of the recommendation of the agents here for instructions to London to make steel rates? A. No, I think in the majority of cases it has been rather against the wishes of most of the agents.

1078 Q. They took it completely out of your hands, is that the idea? A. Yes, that is the idea exactly.

Q. In other words, the provision of the contract, "the altering of the rates on any commodity, the agents in New York shall first confer and agree among themselves as to the rate to be named or the reduction to be made has been arbitrarily changed at the will of the principals," is that the idea? A. That is it exactly. I understand that last question of yours refers to rates on steel?

Q. Yes; was there any other instance of where either the fixing of the rate or the changing of the rate other than

1079 on steel has been arbitrarily taken out of the hands of the Conference here? A. No, I think not; but we have usually consulted the principals on large contracts of case oil.

Q. But even in the instance of case oil, the Conference actually established the rate? A. Well, it has been by cable reference to the principals.

Q. Those are the only exceptions? A. I think the only ones that I can remember.

Q. You have been requested to attend the Conference meetings pretty regularly, have you not? A. Yes.

Q. At those meetings, was the provision of this agreement

1080 carried out, that all your engagements should be reported at the first business day of the week for the week preceding? A. We have not followed that very literally at our meetings. We report any time contracts that have been made, or any contracts that will go beyond the date of our steamer then on the berth.

Q. When do you make the reports, then? A. At the meetings on Tuesdays.

Q. And about the freight lists to be exchanged? A. Not

less than three weeks after the departure of each steamer. 1081

Q. And that also was carried out? A. I really do not know; I dare say it has been, but I am not familiar with it.

Q. You will notice that in the third paragraph of the Eastward Agreement, there is this provision: "No line to book cargoes specifically for a steamer until allowed to do so by a two-thirds majority vote of the New York agents, based on their principals' respective number of alloted sailings." What has been the operation under this agreement with reference to that provision? A. That has been a dead letter, as long as I can remember; each agent books on 1082 his tariff of rates for his own steamer without any reference to the other agents.

Q. The provision seems to be very specific here, that you cannot book your cargo for a specific steamer, or specifically for a steamer, excepting with the consent of two-thirds? A. So I see; but you must remember that all these provisions were made before the lines had worked together, and when we were at that time just making that change. However, as it has worked out, it has not been necessary to do that, and it has not been done.

1083

Q. Not necessary to do that because of the fact that your reports are made either weekly or every three weeks? A. Yes, and because no agent tried to take advantage of the other agents.

Q. You will notice that paragraph 4 says: "That engagements of petroleum in cases, phosphate rock, and coal are not necessarily joint operations, but competition for such articles is to be avoided and the closest possible co-operation is to be aimed at." Do you know why petroleum in cases and phosphate rock and coal were exempted from the provisions of this agreement? A. Because it was not the in- 1084 tention of carrying that cargo in the berth boats, and this agreement was specifically to cover the berth engagements.

Q. Well, do you remember whether or not in the booking of those commodities, such bookings have been reported to the Conference so that you could ascertain the volume of business done? A. I think not.

Q. Never? A. Only such petroleum as was taken for berth steamers. I do not think that we ever reported the

1085 phosphate rock. I would say in that connection, that it is just possible we did at one period, because at this time the interests that looked after the trade of phosphate rock and cotton were identical with the interests in the eastern pool. They are not now, and they were not when this agreement was made; but for a short period between those two times, the interests were identical.

Q. For how long? A. Several years.

Q. Do you mean by several three or four? A. Yes, something like that; may be even five; I don't remember.

1086 Q. Under paragraph 5, with reference to the shipments of the Quartermaster's Department, you will note that it reads: "That shipments of the Quartermaster's Department, the navy (excluding coal), and the Insular Department, and/or any other government department, shall be taken for joint account, and pooled on a basis to be agreed between the respective agents in such a way that all may obtain their proper proportion of the benefits arising from such contract." What was done with respect to that; was that basis finally agreed upon? A. It was the idea at the time this agreement was made, that the shipments of the

1087 government to Manila would form a very important part of the traffic. As a matter of fact, the traffic from time to time has been of a fair volume, but never very large, especially because two or three of the departments shipped entirely by the Pacific coast. That provision was put in in the same way as the other one I have just referred to; when the agreement was new, it was thought necessary to make regulations for large quantities of cargo.

Q. You misinterpret my question. I am not asking for the purpose of it. I am asking whether the rate,—that is to say the basis upon which such commodities should be taken

1088 for the government, was agreed upon? A. I thought you asked me why they should be divided on a certain basis.

Q. No, I am not asking you the reason for it? A. You said they should be taken for joint account and pooled on a basis to be agreed on later.

Q. No, on a basis to be agreed upon by respective agents. I have asked you whether or not any such basis was ever determined by the agents? A. Yes; do you mean the basis of the rate or the basis of the division?

Q. Both? A. I was going to tell you about the division; won't you let me finish. I will do that and tell you about the rate. 1089

Q. Go ahead then, if that is what you mean? A. The volume was not large, however, and it was simply taken by the steamer on the berth as it came along. That applies to that question as to the division. As far as rates are concerned, the rates were agreed upon here between the agents.

Q. Do you know whether or not the rates were modified from time to time? A. Yes; I imagine those rates were modified at different times. 1090

Q. Depending upon whether or not there was competition? A. Well, I suppose all the conditions that existed at each time were taken into consideration.

Q. Were there any times that the rates which you established, or which were established by the Conference for these government shipments, were reduced by outside competition? A. Yes, I recollect there was some competition of the coal boats, and also competition by the Pacific route.

Q. Do you know what the rate was, per ton, quoted to the Navy Department in August, 1907? A. I do not. 1091

MR. BALDWIN: I offer so much of the Conference minutes in evidence, of the meeting held here on August 13, 1907, as applies to navy shipments, the last paragraph.

Received in evidence and marked Petitioner's Exhibit 17, reading as follows:

"NAVY SHIPMENTS.

"It having developed that there is an outsider bidding five dollars per ton, weight or measurement, for the shipments of the Navy Department, consisting of 1200 tons cast iron pipe, various sizes, for shipment from Norfolk to Cavite, in addition to about 1200 tons general cargo from New York, to be forwarded late in October, it has been agreed to authorize Mr. Elliott, the Navy Department's broker, to accept this figure a/c the lines." 1092

Q. I notice, Mr. Sparks, that by reason of the outside competition in August, 1907, by these minutes, that provision

1093 was made by the Conference lines to meet a rate of $5 per ton weight or measurement; do you remember that? A. I do not.

Q. For 1200 tons of cast iron pipe of various sizes; you don't remember that? A. I do not.

Q. It provides in the same paragraph, paragraph 5, that "shipments of specie and explosives shall be dealt with in like manner." What was done under that provision; were there any shipments of specie or explosives which you arranged? A. I do not think there have been any shipments of specie; none that I can remember, but there are regular
1094 movements of explosives, which are taken by the steamer on the berth at the time the shipment wants to go.

Q. And arranged by the Conference? A. Yes.

Q. Paragraph 6 contains the provision "that no return of any description be given to shippers, contractors, etc., and where freight brokerages are paid the amount shall not exceed one and one-quarter per cent., unless where mutually agreed upon by all agents to the contrary." What returns did that refer to; what does that return mean? A. That meant that no return was to be made to shippers or con-
1095 tractors unless the agents all agreed upon it; no more than one and one-quarter per cent. brokerage was to be paid.

Q. What return; what is meant there; what is embraced in the return? A. It says clearly "no return."

Q. What does the "return" mean; some cash return or some rebate, or what does it mean; that "no return of any description," etc. That may be very plain to you as an expert shipping man, but it may not be at all plain to the court when we get up there? A. I do not think that Shakespeare could have written any clearer English than that, or any more plain. It says "no return."

1096 Q. It says "no return of any description shall be given to shippers, contractors, etc.?"

MR. SPOONER: That means one thing.

Q. Do you mean by that, that unless with the consent of two-thirds, no returns or rebates or anything else can go back to the shipper? A. I do not think there is any agreement about the two-thirds.

Q. I mean, unless "mutually agreed?" A. I do not think

"where mutually agreed by all agents" has anything to do with the shippers or contractors. 1097

Q. In operation how was it, whether I read it right or wrong; was that absolute, in which the agent or anybody else excepting the principals could deviate from it; is that what you mean? A. No; the only way in which the agents had any power at all was in the operation of the rates.

Q. Well, your idea is that that paragraph, or that the provision in that paragraph with reference to the "return of any description" was not left in any way to be mutually agreed upon by the agents? A. No, sir; I think I can tell you why that clause was put in, if you would like to know. 1098

Q. No; what I want to know is what you actually did, and what was actually meant by that; I mean the words "no return of any description?"

MR. SPOONER: You mean the practical construction of that?

MR. BALDWIN: Yes.

Q. Going back again for just a moment, Mr. Sparks, to the provisions in paragraph 5 of the Petition with reference to the bids on government business, do you know to what department of the government these bids were to be made, in your Conference? A. Any government department. 1099

MR. SPOONER: Having to do with the subject, I suppose?

THE WITNESS: It says here "or any other government department."

Q. I find, for the purpose of refreshing your memory, under the minutes of June 8th, 1905, which is within three months after this contract was entered into, that the provision is as follows: 1100

"That such bids should be made to the Quartermaster's Department and to the Insular Department."

As a matter of fact, were not your bids only made to two departments for all that business? A. They were not; they were made to others.

Q. With reference to paragraph 8, "That in all matters of detail not herein decided,"—that is, by the agreement—

1101 "the settlement shall be left in the hands of the agents in New York, who shall as far as possible be given a free hand in the conduct of their business." I suppose that the intent and purpose of that has been carried out in the conduct of the business? A. Yes, very largely.

Q. And with reference to Paragraph 7, I suppose you have the same to say about that, have you not; that wherever it has been necessary to comply with the provisions of that, you have done it? A. Do you mean Paragraph 7 or Paragraph 9?

Q. I mean Paragraph 9? A. Yes, we have.

1102 Q. And whatever the result be, I suppose there has been a division in the proper proportion of interest, because that is called for? A. Yes.

Q. And that also applies to all questions connected with the bookings of such additional cargo and the charter of tonnage; that it was governed by the two-thirds majority vote of the New York Agents? A. Well, it was nearly always a unanimous vote.

Q. In Paragraph 11, Mr. Sparks, "No steamer of a greater carrying capacity than 8000 tons all told is to be loaded
1103 under this agreement, except by the unanimous consent of the agents." Why was that limitation fixed of 8000 tons? A. It was to prevent one signatory from carrying an unduly large proportion, by putting large steamers in as against steamers provided by the other signatories.

Q. Then the boats of the principal signatories were included; some were larger than others; is that the idea? A. They were, yes, as a matter of fact.

Q. Mr. Sparks, referring back just a moment to the government shipments,—

1104 MR. BALDWIN: I offer in evidence so much of the New York Conference minutes under date of September 3, 1907, as apply to navy shipments.

Received in evidence and marked Petitioner's Exhibit 18, reading as follows:

"NAVY SHIPMENTS.

"Referring to the previous minutes regarding navy shipments, it has been agreed to accept $5.75 per ton, weight or measurement, on the shipments of general

stores, New York to Cavite, and the shipment of pipe from Norfolk to Olongopo, it being understood that the shipment from Norfolk is to go forward in one steamer. The above figure was necessary owing to competition of McCall & Company, who are to load some coal steamers for Cavite." 1105

Q. Mr. Sparks, turning to the pooling agreement on page 43 of the petition,—as soon as the pooling agreement was made, which as I understand it was in April also, of 1905, did the conference proceed at once to appoint an official measurer? A. I have no doubt they did. 1106

Q. Was it Captain S. S. Dunning? A. He was the measurer at one time; I don't know whether he was the first or not; I think he was.

Q. Under date of April 17th, 1905, I find the following minute of the New York Conference:

"It is agreed that Captain S. S. Dunning be appointed official measurer for the eastbound pool, and that each agent shall appoint a check measurer for their respective steamers, the fee for measuring to be $25,—$15 for Captain Dunning and $10 for the checker." 1107

Does that refresh your recollection now, so that you can state whether Captain Dunning was appointed? A. I have no doubt that is correct; I have no recollection of it.

MR. KIRLIN: That is prior to the date of the eastward agreement?

MR. BALDWIN: Here it is; it may have been the same date; it is dated New York, April 17th, 1905. It is taken from the minutes.

MR. KIRLIN: The agreement under which you are examining is dated July 1st, 1906. 1108

MR. BALDWIN: No; it went into effect at that time; you are mistaken about that.

MR. BURLINGHAM: It was April 13th.

MR. BALDWIN: It goes into effect on April 1st, 1905.

MR. KIRLIN: You are right.

Q. In Paragraph 1 there is a provision that the steamers running eastward and westward respectively, shall make up

1109 as soon as possible after the termination of each voyage, a statement showing all the necessary pooling particulars in the forms prescribed and attached; and that they, together with supporting vouchers, copies of manifests, certificates of cargo space and dead weight capacity, and so on, are to be forwarded as soon as possible to T. B. Royden, at Liverpool, who shall prepare at the end of each year two general pooling accounts. Has that been done right along?

MR. KIRLIN: To avoid repetition of objections, inasmuch as many of these questions are liable to relate
1110 to the eastward and westward trade, may it be understood that we object to all evidence in regard to pooling westward, and to all matters in connection with pooling westward, as outside the scope of the issues, and immaterial and irrelevant.

MR. BALDWIN: That is understood.

Q. Answer the question? A. That is purely a principal's matter; I have no doubt it has been done, but we have no connection with it whatever.

Q. Do you know whether or not the distribution provided
1111 for by the pool has been made at the end of each year since this agreement has been made? A. I have no personal knowledge of it; I have no doubt it has.

Q. I call attention to part of Paragraph 2, subdivision D, on page 45, where you will find the provision: "All discounts, rebates or allowances received back by the owners on any of the above charges are to be credited back to the pool." What was the purpose of that, and what actually happened in operation? A. I don't know anything about what happened in actual operation, because I had nothing whatever to do with the pool; but the intention of it was that
1112 the net charges only should be debited to the pool.

Q. Where was the distribution actually made for these years under this pooling agreement? A. Why, I presume in Liverpool; I don't know.

Q. You were accustomed to collect all the moneys for freight on the eastward traffic here, were you not? A. Yes.

Q. And for the purpose of arriving at the net amount for distribution, you would have to take into consideration what amount of money you received here, would you not? A. We

had nothing to do with that; each agent sends freight to his own principal. 1113

Q. Do you mean to say that you do not send the freight direct to the owner or the consignee, but send it to your principal in the Orient; is that the idea? A. I do not understand the question.

Q. I do not understand you; you said you send the freight to your principal? A. To the owner of the steamer; I will change it that way, if you like. We have nothing whatever to do with the pool distribution.

Q. Who does collect the freight here; you as the agent for your own line? A. Yes. 1114

Q. And that would be true of the other agents of the Conference? A. Yes, sir.

Q. And what do you do with that; do you make your account to your principal here, or to the Conference? A. We have no principal here; we make our account to the owner of the steamer in Europe. I think in the case of the Hamburg Line, we actually send the account to the local office, and they send it to the Hamburg.

Q. How about the Indra Line? A. In the Indra Line, we send it direct to Liverpool. 1115

Q. You make some deduction, I suppose, for your own commissions? A. We do, and the ship's disbursements.

Q. Are there any other deductions that you make besides that here? A. Not that I know of.

Q. Do you know whether or not the pooling accounts were made up at the end of the twelve months of each year, as provision is made for in Paragraph 4 on page 49 of this petition? A. I have no personal knowledge about it.

Q. You have no doubt that was done right along, have you? A. I have no doubt it was.

Q. Do I understand, Mr. Sparks, that you have no knowledge whatsoever about the way this pool was operated; I am not speaking of the pooling rules, but the pool itself? A. Yes, I have a superficial knowledge of it; I have no knowledge whatever of the details. 1116

Q. As to whether or not it was actually carried out, do you mean you don't know anything about that? A. I am quite sure it was. The people made an agreement, and I am quite sure it was carried out. It does not go through our office at all.

219

1117 Q. I believe the Hamburg-American Line has a managing director here, do they not? A. They have two vice-directors here.

Q. Who are they? A. Mr. Sickel and Mr. Myer.

Q. In actual practice, Mr. Sparks, have all your Conference steamers,—I mean by that, not only yours, but all Conference steamers, been measured by this measurer, and the available space determined by him as provided in Paragraph 10 of this pooling agreement? A. Yes, in all cases.

Q. What is your recollection, Mr. Sparks, in the actual
1118 practice under this agreement with reference to the measurements?

MR. KIRLIN: The next section deals with that specifically, folio 153, reading, "A certificate must be granted in the case of steamers on the eastward berth after completion of loading in New York by the official measurer, and in the case of steamers on the westward berth on completion of loading at the last port of call for cargo, by the representative at the Conference agents at that port."

1119 THE WITNESS: My recollection is that the official measurer measures the eastbound boats here before they begin to load, and that he measures the westbound steamers when they arrive, in case there is any vacant space.

Q. I suppose the provision with reference to the granting of certificates has always been complied with? A. Yes.

Q. Otherwise the boats would not clear, would they? A. It would not be a question of clearing, but the boat would not have its particulars to make up its pooling account.

Q. I do not mean in the sense of clearing, that they had
1120 to have a government permit; but so far as your conference was concerned? A. Yes.

Q. In Paragraph 13 I find the provision that "unless otherwise mutually agreed the limit of size of steamers employed either eastward or westward shall be 10,300 tons of 40 cubic feet bale space, but steamers which have been regularly running in the trade for one voyage or more, or are now loading, are to be admitted to the pool even though in excess of the limit above." Is that same limitation in size due to

the explanation you gave a little while ago, that you do not want any of the members of the Conference to have any advantage, because they might load boats which are larger than others have? A. I presume that was the intention here, too. 1121

Q. Under the pooling agreement and the pooling rules, were the commissions of the agents pooled, too? A. Yes.

Q. In order to ascertain what those commissions amounted to, and to determine their just distribution, you would have to have a pretty close tab on the business done by each line as reported to the Conference, would you not? A. No, that was not the method. At the end of each six months, the agents write to the mouthpiece for the time being. 1122

Q. What do you mean; the owner? A. The mouthpiece of the agents here that has already been referred to; and declare what their commissions have been for the past six months, and any one who is in excess pays over to those who are behind.

Q. Don't you send to the mouthpiece the particulars that make up the commissions? A. I think we simply give the name of the steamer, their freight list, so much commission equalling so much money. 1123

Q. And then the Conference, for the purpose of distributing the pool and giving to each one of the agents his percentage relies upon that; they have no further information? A. I don't think so, no.

Q. That has been done, I suppose, regularly since the conference has been formed? A. Yes, I think so.

Q. And at what period of time in each year do you do that? A. I think it is the 30th of June and the 31st of December.

Q. Is there any provision with reference to any of the agents getting a greater percentage than the others, based upon the fact that the boat they represent has done a larger business? A. No; they get it simply on the proportion which their principal's sailings compare to the whole sailings. 1124

Q. In other words, just the same as the principal would participate upon the same basis, they participated? A. Exactly.

Q. Do you know whether or not the make-up of the freight accounts as provided for in this pooling rule and pooling

1125 agreement, has been complied with? A. I do not quite understand which freight accounts you refer to.

Q. Take for instance page 56, paragraph 2, "The net freight shall be ascertained in the following manner:" and then there is a long provision there, one paragraph after another, of what must be done? A. No, I don't know anything about that.

Q. Where were the rebates collected, Mr. Sparks, that paragraph 2 refers to, which must be deducted, all rebates or returns to shippers? A. The only return was the 10 per cent. bonus in regard to which I testified the other day.

1126 Q. And where was that? A. On the eastward steamers, we retained out of the freight list enough to satisfy those bonuses, to pay them when they were due.

Q. And the westward? A. The westward,—we don't know anything about that.

Q. You did not in any way, then, make any provision for the return or the payment of a bonus on the westward traffic? A. No. I would say, Mr. Baldwin, in connection with the pooling agents' commissions, that the agents of the Manchurian Line do not pool their commissions, as far as

1127 I recollect, with the other lines. You may get the impression from my testimony, that they were all pooling.

Q. Are you certain about that, or is that simply your guess? A. I think I can say I am certain about it.

Q. Has that always been true from the time this agreement was formed? A. It has been true since the Manchurian Line came into the trade.

Q. On page 60 there is the provision: "In the event of a steamer owned by other than a recognized Conference owner being loaded, the Signatory loading such steamer shall be responsible to the Pool for any debit balances that may

1128 subsequently be due by such a steamer to the Pool." I suppose there are frequent cases where signatories did load such steamers, were there not? A. I do not think there have been any such cases eastbound; but I think there have been a few cases westbound; but I have no knowledge of that at all.

Q. So you cannot state what was done with reference to that; whether that was carried out? A. No.

Q. I notice on page 63 of the petition as follows: "These

regulations are to come into force as from the beginning of Pool No. 3." What does that "Pool No. 3" mean, were these pools referred to by a given number for each year? A. I take it that that is the idea; we don't know anything about it. I think that was probably the third year's pool. 1129

Q. On page 64 there is this provision: "The Conference shall have the benefit of any salvage on rebates, which shall be dealt with in such manner as the London Committee shall from time to time determine." What was done about that? A. I don't know what was done about it; that would be adjusted in the pool account, which I do not see.

Q. What did that mean "salvage on rebates"? A. It simply means this,—that provision is made for paying these bonuses to shippers at the end of a year, or whenever the period was; and a lot of the shippers do not apply for their divisions, and they disappear, and there is a certain salvage. 1130

MR. BURLINGHAM: An unexpended balance?

THE WITNESS: Uncollected dividends.

Q. Upon what are your commissions fixed, or based, rather? A. On the freight list.

Q. And just how do you arrive at that? A. We take the total freight earnings of the boat, and charge up five per cent. commission on it. 1131

Q. Would that five per cent. be the five per cent. that seems to be provided for in the provision in the pooling rules, "loading commission of five per cent" on page 70? A. Yes, sir, that is the same.

Q. And that same commission,—that is, that same rate of commission applies to all the agents? A. I don't know; I know it applies to us.

Q. On page 71 there is a provision reading, "Deferred Rebates. To be deducted in one total from the total of the Freight account." That applies to both the eastward and the westward? A. I don't know. 1132

Q. It certainly applies to the eastward, don't it? A. I don't know; I don't make up the pool account.

Q. Is there anybody here that does make up the pool account? A. I suppose the American-Asiatic does; perhaps Barber does on his own ships. It is purely an owner's matter.

1133 Q. But don't that also go to the Conference; does any part of the pooling go to the Conference? A. I don't understand what you mean by "the Conference."

Q. Don't they have these Conference meetings where these accounts are sent in, or do the owners send direct to this man Royden in Liverpool? A. The owners send direct to the pool manager, Mr. Royden, in Liverpool.

Q. Mr. Sparks, since these agreements were entered into in April, 1905, has the New York Conference been holding its weekly sessions as provided for? A. Yes, I think all the time.

1134 Q. Down to the present time? A. Yes.

Q. And in which the representatives of these various lines have participated? A. Yes, except as I told you the day before yesterday, the Manchurian Line came for a while, and now do not come.

Q. Because they have gone out of business; is that the idea? A. No, they are still in business.

Q. But not in the conference? A. It all depends on what you call "the Conference."

Q. Do you mean to say that they simply have failed to attend the meetings; is that what you mean? A. Yes, they
1135 simply do not turn up.

Q. And whatever change of rates has been made at any time, the establishment of rates during all that period of time, with the exception of case oil or steel, has been arranged at the Conference? A. Yes.

Q. At these various meetings when the occasion arose? A. Yes.

Adjourned to Tuesday, December 9, 1913, at 10:30 o'clock A. M.

1136

NEW YORK, December 9, 1913. 1187

Met pursuant to adjournment.

Present—GILBERT H. MONTAGUE,
Special Examiner.

APPEARANCES:

(Same as before.)

THOMAS ASHLEY SPARKS resumed the stand.

DIRECT EXAMINATION continued by Mr. Baldwin:

1188 Q. Mr. Sparks, going back a moment to the per cent of the general cargo carried by the Conference lines by the way of the Suez Canal, which you said would probably amount to 95 per cent., you remember that, don't you? A. The general cargo from New York?

Q. Yes? A. Yes.

Q. I believe you confined the investigation you made to a period of how many months? A. I think it was from May, 1911, to 1912.

Q. Would that same per cent. hold true since that time? A. I have not made any investigation.

1189 Q. What is your general knowledge about it, Mr. Sparks? A. It would be something like that, I think.

Q. Generally speaking, you think it would be something like that prior to that time, for the two years prior to that time, don't you? A. Yes, a very, very rough guess, Mr. Baldwin, but I should think about that.

Q. I inquired the other day about the rates that applied to steel products, etc., and you testified that when the rates were changed or made it was done in London? A. Yes.

Q. And that oftentimes it was done in spite of the fact that the majority of the agents here were not in accord with it? 1140
A. Preferred to have it done here, that is what I said.

Q. When you say it was agreed on in London, what do you mean by that? It is a little indefinite on the record and I want to clear that up? A. The Steel Company through a representative of theirs take it up with our principals instead of with us. It is a ltle complicated.

Q. What about the principals who reside here? A. Mr. Ba[illegible]er, who is one of the principals, is consulted by his part-

1141 ner, Mr. Chambers, who lives on the other side, and the American-Asiatic Company have an office of their own in London, and presumably they are consulted by cable.

Q. Then, in other words, although some of the principals reside here when these changes in steel rates would be made, or when they were inaugurated, where the principal would act as such they would operate through this London Conference, is that the idea? A. That is right.

Q. Just turn to paragraph 4 of the petition here, of Exhibit 1. I asked you some questions with reference to the provision here in paragraph 4: "That engagements of petroleum
1142 in cases, phosphate rock and coal are not necessarily joint operations, but competition for such articles is to be avoided and the closest possible co-operation is to be aimed at." I asked you a question: "Do you know why petroleum in cases and phosphate rock and coal were exempted from the provisions of this agreement?" And your answer was "Because it was not the intention of carrying that cargo in the berth boat, and this agreement was specifically to cover the berth engagements." To amplify that a bit, Mr. Sparks, you say it was not the intention of carrying that class of cargo in the
1148 berth boats. Is there any reason why that was exempted? Take the class of commodities I have mentioned here? A. They are usually moved in full cargo lots.

Q. Where are they usually moved from? A. Petroleum usually moves from New York and Philadelphia, phosphate rock moves from Tampa or Port Tampa, and coal from either Baltimore, Philadelphia, Norfolk or Newport News.

Q. Then do I understand that that class of commodities are not as desirable as general cargo, and that is why it was not included? A. Yes, that is partly true and partly because they must be carried direct to be carried economically.

1144 Q. For the last two or three years the steel products have been very largely carried by the Isthmian Line, have they not? A. No, I think not; but during certain periods there is so much activity in steel the berth boats are unable to accommodate it.

Q. Is it because of the fact that these heavy cargoes like steel and such as we have mentioned load the boat down to its dead weight capacity, leaving a lot of space, is that the idea? A. Yes, sir.

Q. Therefore it would not be as lucrative? A. It would not be possible to carry it on as economical a basis. 1145

Q. It would not be as lucrative to the ship owners? A. Yes, it would leave a heavy loss.

Q. Phosphate rock does not go from this port to any amount, does it? A. It goes from Tampa or Port Tampa.

Q. And usually it goes in chartered steamers, doesn't it? A. Yes.

Q. And that is not a commodity that the Conference lines have been caring for very much? A. I testified the other day at one time the interests carrying a proportion of the phosphate were identical with the interests in the Eastward 1146 Conference, but at present that is not so.

Q. How long has that been not so? A. I think between twelve months and two years ago the change was made.

Q. And what interest in the Conference line or lines allied with it did it have before the change was made? A. Well, perhaps I had better give it you from the beginning, it is very short. At one time my firm, Funch, Edye & Company, and Watts, Watts & Company of London had that business themselves. Somewhere about 1904 I think the Conference lines said they thought that was part of their business and that they would like to have an interest in it, and we therefore 1147 made an arrangement with them whereby they had the business as principals and we acted as agents. That continued until maybe eighteen months ago, when there was rather a heavy loss I think on the business, and the principals again decided that they did not want it, so we said we would be very glad to take it back again. Then the Indra Line went to Messrs. Watts, Watts & Company and said they would be willing to continue an interest in it, and after that Mr. Chambers said he would like to have an interest in it, and the interest is now one-third Indra Line, one-third 1148 Chambers, one-third ourselves and Messrs. Watts.

Q. Who establishes the rates for phosphate rock since this tripartite arrangement? A. Simply a matter of bargain between them and Messrs. Watts, Watts & Company, who act as the mouthpiece.

Q. Watts, Watts & Company fix the rate for the Indra Line and for its own boats, and for what other? A. Chambers.

1149 Q. In other words, whatever the mouthpiece established the rate at applies to the three? A. It is hardly a question of establishing the rate; it is simply the charter rate and a pure matter of bargain between the carrier and the shipper.

Q. Whether by bargaining or otherwise, the mouthpiece binds the three, whichever line takes it? A. That is it.

Q. Is that reported to the Conference? A. No.

Q. That is an outside matter entirely, then? A. Yes.

Q. The fact that it is not reported to the Conference, I suppose, means the Conference has no interest in it, pooling or otherwise? A. Not now under the present arrangement.

1150 Q. But up to that time it did, is that the idea? A. While the Conference was interested the reports were made here and they were interested in it, of course.

Q. Who established the rates then, whatever the rate was, by bargain or otherwise; who established it? A. Watts, Watts & Company did it.

Q. For the Conference? A. Yes.

Q. Who are Watts, Watts & Company? A. Watts, Watts & Company are our correspondents in London, a large firm of ship owners.

1151 Q. Are they interested in any of these Conference lines, as owners? A. No.

Q. Or stock participants in any way? A. No, sir, except the interest in this phosphate business which I have already described.

MR. BURLINGHAM: Their interest then is commission, etc.?

THE WITNESS: Yes, sir.

Q. Do you know who acted as the mouthpiece of the Conference lines here in New York in June, 1908? A. No idea.

1152 Q. Could you tell by looking through these minutes (handing papers to witness)? A. I might.

Q. Look at the last paragraph there? A. That does not tell which firm was acting as the mouthpiece.

Q. I notice, Mr. Sparks, under the minutes of June 30, 1908, there is this entry: "PARTICULARS OF CARGO CARRIED. Instead of the firm acting as mouthpiece sending details to Hong Kong of cargo carried by the Conference steamers, hereafter the agents of the vessel in question will

send these details to Hong Kong sending a copy of the letter to the Secretaries of the Conference in London, in accordance with London minutes of June 17, 1908." Do you know whether or not that change was made and complied with? A. Yes, I think so. It had been forgotten, my recollection is, by the mouthpiece, and some criticism was made by London and it was therefore agreed that the agent of each boat should be responsible for sending the particulars. 1153

Q. And then it was sent to Hong Kong, and copies of the letters were sent to London? A. Yes, sir, I think so.

Q. And that has been kept up, I suppose? A. I think so, but I do not recollect about it. I will tell you what that is for, if you want it, Mr. Baldwin. 1154

Q. My purpose is to show these various things were complied with, that is all. I inquired here at the last hearing, I think it was, Mr. Sparks, with reference to this limiting the amount of tonnage of any vessel, you remember, not to exceed 10,300 tons? A. Yes.

Q. That is, 10,300 tons measurement. Were you attending the Conference July 16, 1907? A. I do not know whether that particular date I was there, but I was attending the Conference meetings before that time.

Q. I notice in the Conference minutes here of July 16, 1907, the following: 1155

"INDRAVELLI.

"The Official certificate of this steamer is the first intimation that the Agents had that she exceeded the Pool Limit of 10,300 tons measurement, and Barber & Co. and Howard Houlder and Partners object to her being paid for more than the maximum quantity allowed by the Pool. Funch, Edye & Co. and the American Asiatic S. S. Co. consider that Clause 15 of the Pooling Agreement, which provided that a steamer that has been running in the trade for one voyage or more, should be admitted to the pool, covers this steamer irrespective of who may load her. It is also mentioned that this steamer's size has been increased by addition of a shelter deck, since the date of the Pooling Agreement." 1156

You say that was one of whose ships? A. The Indra Line.

Q. That is one of your boats then? A. I should judge

1157 from that paragraph that she was being loaded on that occasion perhaps by the American Asiatic Company. You see they loaded some of Mr. Royden's boats. I can tell from the minutes there, Mr. Baldwin.

Q. There they are (handing minutes to witness)? A. American Asiatic, No. 2, yes, there it is; they were evidently loading that boat you see.

Q. It seems to have been the contention made at that Conference that Clause 15 of the Pooling Agreement covered this steamer irrespective of who loaded her; you remember that, don't you? A. No, I do not know why the objection
1158 was made.

Q. Do you know what was done about that? A. I imagine that it was simply spread on the minutes of the New York meeting so that it would come to the attention and be settled by the principals at one of their subsequent meetings.

Q. Clause 15 provides:

> "Should it be found that through unforeseen circumstances the provisions of this Pooling Agreement press hardly on any individual steamer, it is agreed that the signatories shall take the matter up and deal with it in
> 1159 the spirit of this Agreement which is that there should be a general community of interest and that all should share equally in the advantages or, if need be, the losses that may arise therefrom."

Would the size of the vessel affect that, the mere fact that it exceeded 10,300 tons?

MR. BURLINGHAM: In what respect do you mean?

Q. In what respect would that press upon the individual steamer? A. I do not think it would.

1160 Q. That is the provision, isn't it, that applies to it; there is the pooling agreement? A. I do not know whether that clause can be said to apply in that particular case; it might.

Q. It was evidently urged by your firm, Funch, Edye & Company? A. The Conference put in some objection and we had to put in an answer so as to get it on the record. I have every reason to believe she was included to her full capacity. I do not know that we ever heard any more about it.

Q. But they did insist pretty strictly upon the size of the vessels conforming to the agreement, didn't they? A. No, it has been varied a great many times.

Q. And it has always resulted in some sort of an adjustment between the principals? A. I think always. 1161

Q. Mr. Sparks, with reference to the powers of the New York Conference under this agreement, I think you have already testified that they established all the rates here except those isolated cases you have mentioned? A. Yes.

Q. Are there any other instances that you can think of where the principals or the London Conference took that out of the activities of the New York Conference? A. I cannot recall any at the moment.

Q. It is very seldom they intervened, is it? A. Yes, quite so. 1162

Q. Now, was it a common practice of these weekly meetings of the New York Conference to make contracts with individual shippers by which they got some advantage of preferential rates from others? A. From time to time rates had been agreed upon, contracts or specific proposals for the whole of the shipper's business had something under the tariff rates, yes.

Q. And these rates to individual shippers were then made although the tariff rate remained the same, they got a lesser rate, is that the case? A. Yes; it is also quite frequent that the tariff was changed to meet the contract rate. 1163

Q. I notice under the minutes of March 6, 1905, of the New York Conference the following:

> "The American Metal Company having put forward a demand to participate under the Bonus circular on their contract dated December 21st, 1904, it was decided that they are not entitled to such participation, since the contract being a special agreement, already stipulates for a return of 10%."

There was a case where a rate was fixed, and then in addition to that, however, they had a 10 per cent. reduction; is that the idea? A. No, the minutes specifically say they are not entitled to 10 per cent. 1164

Q. No, it says, the contract itself provides for a return of 10 per cent.? A. Oh, I did not understand that. Would you mind reading it again?

Q. I will give it to you (handing minutes to witness). You had a contract; that is, someone in the Conference had a contract with the American Metal Company, didn't it? A. I think so, but I do not recollect it.

1165 Q. And in that they were entitled to a reduction of 10 per cent., is that it? A. The minutes would so indicate, but I have no recollection of it at all.

Q. Then that would provide for 10 per cent. off the regular rate, is that it? A. Presumably.

Q. Have you got those contracts as far back as 1904? A. We have not.

Q. Do you know whether this contract with the American Metal Company is in existence or not? A. I do not know who made it, Mr. Baldwin.

1166 Q. Could you tell from the minutes? A. I do not expect so, but I will look.

Q. I do not know whether you can or not (handing minutes to witness). A. The minutes do not show.

Q. Were there a number of special contracts of that kind where a provision was made for a return of 10 per cent. in the contract? A. I have no recollection of it, I do not remember any at all.

Q. From the fact that it is in the minutes you assume it to be true that the American Metal Company at least had one on that date? A. Evidently.

1167 Q. I read from the minutes of the New York Conference of April 17, 1905, as follows:

> "It was decided that the rates on Nails, Pipes, etc., shall be reduced to 22/6 to Hong Kong, Shanghai and Japan, to the U. S. Steel Products Export Co.; also to merchants as special contracts."

That is 22 shillings 6 pence, isn't it? A. Yes, sir.

Q. What is the meaning of the last provision there "also to merchants as special contracts?" A. I should judge that the tariff rate was something higher than that and they

1168 agreed to make the rate 22/6 to the shipper, and any merchant who came along could have the same price.

Q. It says here "special contracts;" there would not be anything particular about it if it was a general provision applying to all the merchants; it would not have used the term "special contracts" here, would it? A. They do not pick their words so very carefully; I think that meant where a merchant came and made a contract he was to get the same rate as the steamer.

Q. Would not that specify a certain rate that was satis-

factory to the carriers or the Conference? A. It might have, but I do not see anything in the minutes so far as you have read it. I think that word "special" has no significance at all. 1169

Q. You mean to say, do you, Mr. Sparks, that they would make the same provision to every person regardless of whether there was some agreement that was satisfactory by way of either time or amount to the conference? A. I think under that minute any agent would have felt authorized to make a contract with the shipper at 22/6. Of course it is very difficult to remember as far back as that what was done with it. 1170

Q. I read from the minutes of April 27th, 1905:

> "COPPER. It is decided that the agents are authorized to accept offers for Copper at 25/-; the quoted rate remains at 27/6."

Do you know why that change in the rate was made at that time? A. My recollection is at that time China was reorganizing her currency, and there was a large lot of copper being offered by all sorts of people, and it was considered desirable freight, and rather than reduce the asking rate the agents were authorized to accept from the Conference at two and six less than the asking rate. 1171

Q. Was that regardless of the amount offered? A. I think so entirely.

Q. Mr. Sparks, in 1905 wasn't there some form of an agreement that was entered into between the Conference lines and the Trans-Continental lines and Pacific lines? A. I do not recollect the year, but at one time there was an arrangement with the Trans-Continental-Pacific route.

Q. Have you got the original or a copy of the original of the agreement that was made or entered into about July 13th, 1905, between the lines that I have mentioned? A. My recollection is there was a memorandum agreement covering the two westbound commodities. I do not know where it is, and I have not seen it for a great many years, but I do not think there ever was any agreement covering anything else. 1172

Q. Prior to July, 1905, Mr. Sparks, the Suez rates, the Conference Suez rates from the Atlantic seaboard for commodities originating say anywhere from the Great Lakes

1173 to the Atlantic seaboard and then to the Asiatic ports, generally speaking, was less by the Conference lines than it was by the Trans-Continental and Pacific, was it not? A. Yes, there had been a serious fight on the Suez route.

Q. And as a result of that there was a conference held here in New York between the representatives of the various Trans-Atlantic lines and the representatives of the Conference? A. I do not recollect whether we held any meetings in New York, but there were some meetings held about that time.

1174 Q. I show you what purports to be a copy of the minutes of July 13, 1905. Does that refresh your recollection whether there was or not (handing minutes to witness)? A. Yes, this was evidently held in our office.

Q. In the office of Funch, Edye & Company? A. Yes.

Q. And the results of that meeting were inscribed in the minutes, were they not? A. I have no recollection.

Q. I show you that again (handing minutes to witness)). Who were the members of the firm then? A. Gottheil, Volckens and Walther. It appears from this that only a general discussion took place—

1175 Q. That will not be responsive; make it responsive? A. I will be very glad to.

Q. Look at the minutes and say if that is so (handing minutes to witness)? A. Yes. It appears at this meeting a general discussion took place, and a sub-committee was appointed, and the result of the deliberations of the sub-committee appears to be attached to the minutes.

Q. And is the result of the deliberations of the sub-committee what appears in the minutes of July 13, 1905? A. Apparently so.

1176 MR. BALDWIN: I offer in evidence the minutes of July 13, 1905, of the New York Conference.

Marked Petitioner's Exhibit 19.

Q. I find under the same date, Mr. Sparks—it appears to be the same date— A. What date is that?

Q. That would be July 13, 1905. I find under the same date, Mr. Sparks, a report of the committee appointed at the joint Suez and Trans-Continental meeting, in which the committee recommended rates upon various commodities, etc.?

A. That is the report of the sub-committee to which I have already referred. 1177

MR. BALDWIN: I offer the recommendation in evidence.

Marked Petitioner's Exhibit 20.

MR. BALDWIN: It appears, according to the minutes of July 14, 1905, the next day, that the Conference adopted the report, and I offer it in evidence.

Marked Petitioner's Exhibit 21.

Q. In the report of the committee which seems to have been adopted I find, under a number of the commodities appearing as topics, it uses the words "Bonus conceded." What does that mean? A. That the rate that was fixed— 1178

Q. For instance, I will give you a suggestion:

"GENERAL MERCHANDISE:

Present rate, Suez from New York, 27/6 to 30/ per 40 C. F.

Present overland rate, $1.75 per 100 lbs.

Suggested change:

Suez, from New York, 32/6 per 40 C. F. 1179

Overland to remain the same.

Railroads reserve the right to specify commodity rates at times when considered necessary. Bonus conceded."

A. That means on the Suez rate the 10 per cent. bonus offered to shippers would apply.

Q. And then where it uses the words, for instance, under the topic "Beer" and a number of others here, and ending up "No bonus," that no bonus should be allowed by the Conference lines? A. That is right, on that particular commodity. 1180

MR. BALDWIN: Mr. Maclay, have you the American-Manchurian Agreement that Mr. Dodwell said he would send to his counsel here?

MR. MACLAY: Yes, sir (producing).

MR. BALDWIN: Have you got the Singapore Agreement which he also said he would produce?

MR. MACLAY: Yes, sir; dated London, September 15, 1905 (producing).

1181 Mr. Maclay hands the two papers referred to to Mr. Baldwin.

Adjourned to Friday, December 12, 1913, at 10:30 A. M.

NEW YORK, December 16, 1913.

Met pursuant to adjournment.

Present—GILBERT H. MONTAGUE,
Special Examiner.

APPEARANCES:

1182 (Same as before.)

MR. MONTGOMERY: I ask that the American-Manchurian Agreement, produced by Mr. Maclay at the last hearing, be marked for identification.

Marked Petitioner's Exhibit 22 for identification.

MR. MONTGOMERY: I also suggest that the Singaport Agreement, produced by Mr. Maclay at the last hearing, be marked for identification.

Marked Petitioner's Exhibit 23 for identification.

1183 THOMAS ASHLEY SPARKS, resumed the stand.

DIRECT EXAMINATION Continued by Mr. Montgomery:

Q. Mr. Sparks, under what circumstances do the lines in this Conference pay brokerage to freight brokers on outward business? A. As far as I know they pay brokerage to all brokers who bring business.

Q. What per cent.? A. 1¼ per cent., the usual per cent.

Q. Is that ever allowed to the shipper himself instead of to a broker? A. Certainly not generally, and I cannot recall any specific instances where it has been done

1184 Q. That rate is established by the Conference Agents at New York? A. No, it is a custom of the port applying to all trades.

Q. What I mean is, for example, Funch, Edye & Company would not be permitted to pay a larger percentage than 1¼ per cent., the Conference here would not permit you to pay any other brokerage than 1¼ per cent. without permission from the Conference, would they? A. No, it would not be done.

Q. So that it really is established by the Conference or acquiesced in by the Conference? A. No, it is the custom of the port. 1185

Q. Mr. Sparks, is that brokerage ever deferred, the payment of that brokerage ever deferred and paid as a rebate? A. Not to my knowledge.

Q. I call your attention to the minutes of the New York Conference of June 8th, 1905, containing the following paragraph:

"BROKERAGE ON NAVY FREIGHT.

"The agreed brokerage on navy department freight has been 1¼ per cent., but beginning with the Shimosa it is agreed that a deferred rebate of an additional 1¼ per cent., will be paid at the end of the year provided the Conference Lines secure all of the freight of the navy department up to the end of the year." 1186

Do you recall that? A. I do not.

Q. Do you recall whether or not the lines paid an additional commission to the freight brokers on navy freight? A. I do not recall, but I am quite willing to take that minute as representing what was done. 1187

MR. SPOONER: Do you know what that means?

THE WITNESS: I have no idea of it at all; I do not understand that at all. Perhaps that is not correctly copied, Mr. Montgomery.

(The witness and Mr. Montgomery compare the quotation with the original and find it to be correctly copied.)

Q. Mr. Sparks, could you tell whether that was a rebate to the broker or not? A. It is undoubtedly a misnomer; it should have read a deferred brokerage. 1188

Q. You have not any idea that the Government received a deferred rebate on these shipments? A. I am quite sure they did not.

Q. You are quite sure it was for the broker? A. Undoubtedly.

Q. How would a broker earn that, Mr Sparks, what control had he of these navy shipments that enable him to earn it? A I doubt very much whether he had any control. At

1189 the same time there was a broker who did book navy freight with us and I imagine we probably lost the navy freight then and it was moving overland, and the broker came to us and said he thought he could get it back again and we wanted it back again and we agreed to pay him double commission if he did get it back again.

Q. That is, if he got all of it? A. Yes, sir.

Q. You do not recollect that? A. No, I have no recollection of it.

Q. I would like to find out a little more about that, Mr. Sparks. What member of the conference would be more fa-
1190 miliar with that? A. I cannot tell you who would remember an isolated instance of that sort.

Q. The minutes recite that you were present, Mr. Sparks. A. I am quite prepared to accept what the minutes say.

Q. I wish you would look at what appear to be the entire minutes for June 8th, 1905, reciting that you were present, and see if there is anything in the minutes to refresh your recollection about that transaction. I realize it was some little time ago (handing minutes to witness). A. There is nothing special in the minutes to distinguish them from any
1191 other, Mr. Montgomery, and I do not recollect that meeting any better than I would recollect any meeting in 1905.

Q. Do you recall who the freight broker was who was giving you navy freight at that time? A. I expect it was Arthur C. Elliot. He was always the broker who worked the navy business with us as far as I can recall. It is a great many years, however, since we had any navy freight.

Q. I call your attention to the minutes of November 13, 1907, reading as follows:

"MINEOLA.

1192 This steamer has taken three to four hundred tons of navy freight to Manila at $5.50. This cargo was offered to us, but we decided not to break our rate as such action would in all probability make trouble for us with other government departments. This shipment going past us will therefore not affect the navy brokers deferred commission."

Do you recall that incident, Mr. Sparks? A. I recall the incident of the Mineola, but I do not recall any special note being made about the broker's commission.

Q. What do you consider that to mean, Mr. Sparks? A. I consider it to mean exactly what I thought when you brought up the subject, deferred commissions are always paid for the work whether the work is performed or not. 1193

Q. You do not see anything in that minute that you consider to mean that, Mr. Sparks? A. Yes, I do, certainly. Shall I explain?

Q. Yes, you may explain it? A. The first minute you read said that there was to be a deferred rebate, which I suppose to have meant deferred brokerage paid to the broker, provided lines got all the navy shipments. The second minute that you read shows that although they did not get all the navy shipments they were going to pay the deferred rebate or brokerage anyhow. 1194

Q. Do you know what the navy shipments amounted to, about, in a year? A. No.

Q. At one time they were quite large, weren't they? A. At one time they were.

Q. At about that period? A. At about that period.

Q. You notice this is only a shipment of three to four hundred tons? A. Yes.

Q. That is not very important in that business, is it? A. I do not understand what you mean by "important." 1195

Q. I mean it is not a very large proportion of the business, probably, for that year, is it? A. I do not remember what the tonnage was for that year.

Q. You know three or four hundred tons would not be a very important amount, don't you? A. It might be 10 per cent of it.

Q. You do not find anything in this minute or anything in your recollection, do you, that shows an intention to waive the general policy of insisting upon all the freight coming to the Conference? A. It is quite evident that the policy was waived. 1196

Q. Do you know of any other instance in which it was waived? A. No, I have no recollection of the whole occurrence except the minute that you read to me.

Q. So that your statement as to your understanding of the policy is based entirely upon the fact that they did waive in this instance a shipment of three to four hundred tons? A. That is so.

1197 Q. Have there been other deferred brokerages of this kind paid for all of the given shippers' shipments? A. I do not recollect any. I did not recollect this one until you read the minute.

Q. Do you recall, Mr. Sparks, that in 1906, there were meetings of a conference called the General Conference Committee of the Suez and Pacific Steamship Lines held here? A. I do not recollect the year, but I do remember there were such meetings.

Q. Did you attend them? A. I attended some of them.

Q. Do you remember how long those meetings continued,
1198 that is, during what period of time they continued? A. No, I do not remember.

Q. Do you remember how frequently they were held? A. No.

Q. Do you remember the nature of the business transacted at the meetings? A. The object was to put rates via Suez and via the Pacific coast on a parity, and sub-committees were appointed for the purpose of working out a parity of rates.

Q. The rates were put on a parity, weren't they? A. They were so far as we were able to do it.

1199 Q. Do you recollect for how long a time that parity was maintained? A. I do not recollect exactly, but perhaps 18 months or two years.

Q. Perhaps 18 months or two years? A. Yes, sir.

Q. That was pursuant to an agreement entered into between the Conference Lines via Suez and the Trans-Continental railroad and the steamship lines from the Pacific coast to the Far East, was it not? A. I do not recollect that the railroads were a party to it, I think not.

Q. Were not the railroads represented at the meetings?
1200 A. There were some railroad men there, but I think they represented, styled themselves as representing the steamship lines; that is my recollection. It is a very long time ago, but that is my recollection.

Q. You remember that there was an agreement made with those lines between at least the Pacific Ocean lines and the Suez lines at this conference? A. Yes, there were meetings; whether there was an agreement or not I cannot remember, but at any rate there were meetings, which amounted to the same thing.

Q. That agreement provided what ports the Suez lines could carry freight from, didn't it? 1201

MR. BURLINGHAM: Is this agreement in writing?

MR. SPOONER: You assume there was an agreement.

Q. There was an agreement of some sort, wasn't there, written or oral? A. I think there was a written agreement about homeward rates on two commodities.

Q. Homeward commodities? A. Yes. But whether there was ever any written agreement on outward business I do not recall.

Q. You do recall that there was a general understanding? 1202
A. Oh, certainly.

Q. And a rate committee was appointed by the two interests, was there not? A. Yes.

Q. So they were both represented at this rate committee? A. Yes.

Q. And they made and recommended rates by each route, which were adopted by the lines operating each way, weren't they? A. Yes, that is correct.

Q. Whether that was under a written agreement or not you are not sure? A. No, I do not recall, but I am sure some minutes were kept of the rates they arrived at. 1203

Q. Do you remember why that co-operation between the routes terminated? A. I think the Pacific lines pulled out a lot of their Asiatic rates, and automatically brought the understanding to a close.

Q. I call your attention to a cable sent to Barjointch, Liverpool, September 23, 1903, reading as follows:

"Pacific Lines without doubt will give Interstate Commerce new rates October 1st effective November 1st a considerable advance almost—certain but in view of—trade—generally don't expect to immediate—material— 1204
benefit—Suez Lines."

Does that refresh your recollection as to when this agreement terminated, and why? A. That confirms what I said just now, the Pacific lines evidently cancelled their through rates to the far East.

Q. Was not that because of a requirement that they publish their proportions of the through rates, or something of that sort? A. I think it was because some of their through

1205 rates were less than their rates to the Pacific coast terminals, and they did not want to risk their Pacific coast business, which is much larger than their Asiatic business, by having the lower rates in effect.

Q. That was about the time, was it not, that the parity of rates ceased? A. I cannot recall when it was.

Q. Now, I ask you, Mr. Sparks, if this agreement or understanding with these lines affected in any way the ports that the Suez lines were allowed to serve? I think you did not answer that? A. No, I have no recollection of any limitation as to ports.

1206 Q. I will call your attention to a cable of November 1, 1906, to Whitjoint, London, reading as follows:

> "Referring to your telegram of the 31st are offered 12000 bales cotton from Galveston, Texas, U. S., to three ports in Japan 60c. Pacific Lines do not think we are entitled to to load at Galveston according to agreement they decline to give permission we hold we are entitled to to load at Galveston or elsewhere at the rate of New York tariff plus arbitrary to New York we consider it advisable to avoid all dispute if possible Pacific Lines
> 1207 for the present Tweedie will probably be able to obtain business."

Does that refresh your recollection as to whether you made this agreement at any time in restriction upon the ports to be served by the Suez lines? A. No. I doubt very much whether there was any such restriction.

Q. How do you suppose that cable came to be sent? Do you remember the question having come up? A. No, I do not at all. It is quite evident that the agreement or understanding with the Pacific lines simply said nothing, because that was the only question under discussion at the time the joint
1208 tariff was made up; and inasmuch as a direct steamer out of Galveston would compete directly with the Southern Pacific steamship interests on the Pacific coast, they probably took advantage of the fact to try and prevent our going into Galveston.

Q. Do you remember whether you did go into Galveston? A. We have been going into Galveston both before and since then.

Q. Before November 1, 1906? A. Well, it is difficult to be

exact, but I think we have been going there for ten or fifteen years. We are going there still. 1209

Q. You do not remember whether at that particular time, November 1st, 1906, you did go and take that 12,000 bales of cotton, do you? A. No, I have no idea.

Q. Is there any way we can find out about that, Mr. Sparks? A. We might be able to find out through our Galveston agents whether we did for the port parcel.

Q. I call your attention to the minutes of January 8th, 1907, reading as follows:

"Cotton from the Gulf: The American-Asiatic Steamship Co. were requested to write to London and ask whether the principals on that side are willing that the agents here should push the question of our right to go to the Gulf to the point of breaking our relations with the Trans-Pacific interests, and to add that, in the opinion of the agents, it is of vital importance that this right should be recognized, and moreover that as the Suez-Pacific agreement is of more value to the latter interests than the former, no apparent harm can come of pushing the point to the limit. It is desired that a cable reply be sent from London on receipt of this letter." 1210 1211

Do you recall that question coming up in that discussion? A. I do not.

Q. You cannot state then what the outcome of that was at that time? A. I have no idea.

Q. You recall in a general way that there was a strong contention made by the Pacific lines that you should not be permitted under your agreement to take cargo from the Gulf, don't you? A. I have no recollection, but I gather that from the minutes, which I am willing to accept as correct.

Q. Mr. Sparks, do you recall a discussion with the Pacific lines in 1906 as to whether you should be obliged to charge higher rates to ports in the far East that were not ports of call? A. Yes, I have an indistinct recollection that we had some discussion on arbitraries, and I think that the subcommittee either drew up or attempted to draw up a joint list of arbitraries to ports beyond ports of call. 1212

Q. Were those adopted? A. I do not recollect.

MR. MONTGOMERY: I offer in evidence the minutes of a meeting of the General Conference Committee

1213 of the Suez and Pacific Steamship Lines, held at 10 to 12 Broadway, March 5, 1906.

Marked Petitioner's Exhibit 24.

Q. I call your attention to a resolution that was passed, and to this clause:

"That arbitraries beyond such ports to all other ports in the Far East shall be mutually arranged as soon as possible and uniformly exacted by both the Suez and Pacific Ocean Lines on all shipments offering unless a deviation therefrom is authorized by the Rate

1214 Committee.

This was agreed to unanimously."

Do you recall that this minute or resolution was followed out? A. No, I do not recollect what was done about it.

Q. Whether they were mutually arranged? A. I should think most probably, but I have no recollection about it.

Q. You do not recall then whether the rates were altered because of this discussion? A. No. I should think the minutes would show, but I do not recollect it.

Q. I am not certain, Mr. Sparks, that we have all of the

1215 minutes of the joint meetings of the Conference. You do not appear to recollect exactly the periods covered, that this joint conference was held? A. That is so.

Q. Now I notice, Mr. Sparks, the minutes of the Conference for July 5, 1910, under the head "Rates of Freight," that some rate committee reported recommending advances. What rate committee was that? That would not be the joint rate committee of the two interests, would it, the Suez and the Pacific? A. No, I am quite sure we did not last anything like as long as that.

1216 Q. What rate committee does this refer to? A. I should suppose that that was the department managers of the different agents' offices.

Q. That is, the different agencies in the Suez Conference? A. Yes.

Q. And they made recommendations from time to time in regard to the rate? A. Yes.

Q. And do still? A. I do not think that they have any particular activities now. I did not recollect that we had a formally arranged rate committee in 1910. I think it was

simply the department managers getting together and working out the various commodities. 1217

Q. Now, about these contracts, Mr. Sparks. I show you what purports to be a copy of a contract dated November 27, 1912, between Barber & Company, Incorporated, steamship agents, and the Singer Manufacturing Company, and ask you if that is a copy of the contract that was entered into on behalf of the Conference Lines with the Singer Company at that time (handing paper to witness)? A. I have no doubt that that is correct.

MR. MONTGOMERY: I offer it in evidence. 1218
Marked Petitioner's Exhibit 25.

Q. I show you what purports to be a copy of a contract entered into between the same parties December 26th, 1912, and ask you if that is a copy of a contract entered into between the Conference Lines and the Singer Company (handing paper to witness)? A. I have no doubt it is correct.

MR. MONTGOMERY: I offer this in evidence.
Marked Petitioner's Exhibit 26.
MR. SPOONER: It is the same thing, isn't it?
MR. MONTGOMERY: It applies to different ports. 1219
Exhibit 25 relates to shipments to Manila and the Philippine Islands, and Exhibit 26 refers to shipments to China and Japan.

Q. I notice, Mr. Sparks, that both of these contracts provide a rate of $6.75 net for a ton of 40 cubic feet or 2240 pounds at the ship's option. What was the rate on sewing machines that was charged in the absence of a contract at that time? A. I cannot inform you.

Q. I show you Exhibit 16 for Identification, the rate book, and under the head of "Sewing Machines" I call your attention to "rates, Manila, $8, China and Japan 32/6." 32/6 means 32 shillings and 6 pence, does it not? A. Yes, sir. 1220

Q. This Exhibit 16 for Identification appears to have been published January 1, 1910. Are cargo rates higher or lower now than on January 1, 1910? A. I think they are most of them higher.

Q. Then it is safe to say that the rate to Manila, in the absence of a contract, would not be less than $8 a ton; would it? A. I do not think that follows at all.

1221 Q. Why would that be? A. There may have been several rates on sewing machines put in during that period. I am afraid I am not quite competent to give you exact information on that point.

Q. You had a rate of $8 to Manila January 1, 1910. The general tendency of rates has been higher rather than lower since that time, has it not? A. Yes, sir.

Q. And generally speaking, all rates are higher now than January 1, 1910? A. Yes, sir.

Q. What is there about sewing machines that would indicate that the general rate on sewing machines would not
1222 be higher rather than lower? A. There is nothing about the sewing machine to indicate it.

Q. You do not know what your going rate on sewing machines is? A. I do not. Our rate man can give you all that information.

Q. But you are more expert in translating than I am. What is 32/6 the equivalent of in American money? A. $8.

Q. So that the rate to China and Japan provided for in Exhibit 16 for identification was also $8? A. Practically speaking, yes.

1223 Q. Practically eight dollars? A. Yes, sir.

Q. And you do not know of that having been lowered generally on sewing machines? A. I do not know anything about it.

Q. Assuming that the rate generally on sewing machines has not been lowered, and it is still $8, that would give the Singer an advantage of $1.25 a ton through their having made this contract, wouldn't it? A. I do not think that is at all a safe assumption.

Q. Let us make it whether it is safe or not?

1224 MR. SPOONER: You cannot expect him to answer it on the assumption it is safe if he thinks it is unsafe.

Q. Assuming that the rate generally on sewing mechines has not been lowered and it is still $8, that would give the Singer an advantage of $1.25 a ton through their having made this contract, would it; that would be true, would it, Mr. Sparks? A. That would be true, Mr. Montgomery.

Q. That they have obtained an advantage of $1.25 a ton through having made a contract unless there has been a low-

ering generally on the rates of sewing machines since January 1, 1910? A. That is correct. 1225

Q. You have no idea that there has been a general lowering, have you? A. I think it is entirely probable that when that contract was made the open rate was made $6.75; but you can get all that information from our rate man, and he will be very glad to furnish it to you.

Q. Have you any reason for thinking that the general rates were lowered at that time, Mr. Sparks? A. That has been the policy on a great many occasions.

Q. Do you carry sewing machines to the Far East for others? A. I do not know at all. 1226

Q. Whether they were or not, the rates so far as you know, never were lowered until these contracts were made, were they? A. I do not know anything about it, Mr. Montgomery.

Q. I call your attention to what purports to be a copy of a contract entered into between Barber & Company, Incorporated, and the Standard Oil Company of New York, which does not appear to be dated, but which appears to cover the carriage of freight from August 1, 1912, to July 31, 1914, inclusive, and ask you if that is a copy of a contract which was made on behalf of the Conference Lines with the Standard Oil Company of New York (handing paper to witness)? A. Messrs. Barber & Company did make a contract, and I am willing to assume that this is a correct copy. 1227

MR. BURLINGHAM: You got it from the Standard Oil Company?

MR. MONTGOMERY: I got it from the Standard Oil Company.

THE WITNESS: I see the rates are filled in with pencil?

MR. MONTGOMERY: Yes.

THE WITNESS: I think they are correct, however. 1228

MR. MONTGOMERY: I offer this in evidence.

Marked Petitioner's Exhibit 27.

Q. I notice that this contract, Exhibit 27, provides a rate of 23 shillings and 9 pence apparently on lubricating oil, grease and wax to Singapore, Manila, Hong Kong, Shanghai, Kobe, and Yokohama. I notice that the rate contained in the Exhibit 16 for Identification on lubricating oil and grease is 25 shillings n. b. What does that mean? A. No bonus.

1229 Q. And that that is deleted and 27 shillings and 6 pence written in in pencil as the rate. Do you recall when that pencil alteration was made? A. I do not.

Q. Is 27/6 the going rate on lubricating oil and grease? A. I do not know. Mr. Goodwin, our rate man, can give you all that information.

MR. MONTGOMERY: Then I will ask those questions of Mr. Goodwin, but I would like to have you identify a few other things.

1230 Q. Mr. Sparks, I show you what purports to be a letter from Mitsui & Company, Limited, to Funch, Edye & Company, dated August 16, 1912, and ask you if that is a letter received by you? In fact I think you produced it (handing paper to witness)? A. Yes, I did produce it, and it is a letter received by us from Mitsui & Company.

Q. And the rates provided there, a rate of 23/9 on lubricating oil to Japan and China is still in effect? A. That is correct. This contract has evidently expired, being for one year beginning August 1, 1912, and continuing until the end of July, 1913.

1231 Q. Do you know whether there is another contract in effect now? A. No, I do not know, but I can ascertain for you.

MR. MONTGOMERY: I will offer this in evidence.
Marked Petitioner's Exhibit 28.

Q. I show you what purports to be a contract entered into November 24, 1910, between Funch, Edye & Company, Agents, and W. S. Sparks, for Wrights Health Underwear Co. Is that your brother? A. Yes. It should be W. J. Sparks. That is correct. I produced that, too.

1232 MR. MONTGOMERY: I offer that in evidence.
Marked Petitioner's Exhibit 29.

Q. This agreement of the 18th of July, 1908, between General Edwards, Chief of the Bureau of Insular Affairs, and the United States and China and Japan Line, etc., is one produced by you, is it not (handing paper to witness)? A. Yes, sir.

MR. MONTGOMERY: I ask to have that marked for identification.

Marked Petitioner's Exhibit 30 for Identification.

Q. And this supplemental agreement, which does not appear to be dated, between the same parties, is one that you produced (handing paper to witness)? A. Yes; I also produced this. The date evidently is not filled in. It must have been somewhere around June or July, 1909, as the contract is dated the 18th day of June, 1908, which expired on the 1st of July, 1909, until the 1st of July, 1911. 1283

Q. That is not a current contract then? A. No.

Q. Have you that? A. No, the current contract was made by the American-Manchurian Line.

MR. MONTGOMERY: I ask that this supplemental contract be marked Exhibit 30-A, for identification. 1284

Marked Petitioner's Exhibit 30-A for Identification.

Adjourned to Friday, December 13, 1913, at 10:30 o'clock A. M.

New York, December 30, 1913.

Met pursuant to adjournment.

Present—GILBERT H. MONTAGUE, Special Examiner.

APPEARANCES: 1285

(Same as before.)

ROBERT H. GOODWIN, a witness called on behalf of the Petitioner, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Goodwin, you are employed by Funch, Eyde & Company? A. I am.

Q. In what capacity? A. As department manager.

Q. What department? A. The Far Eastern Lines.

Q. That would be Funch, Edye & Company's department as agent of the United States & China-Japan Steamship Line, is that it? A. Yes, sir. 1286

Q. How long have you held that position? A. Very close to seven years; I think it was March, 1907.

Q. So that since March, 1907, or thereabouts, you have been familiar with the rates charged in that traffic? A. I have.

1237 Q. With the contracts, and so forth? A. Yes.

Q. Mr. Sparks testified here the other day, Mr. Goodwin, and identified some contracts; among others I notice a contract dated November 27, 1912, between Barber & Company, Incorporated, and the Singer Manufacturing Company, for all their shipments of sewing machines and parts from New York to Manila and the Philippines during 1913—this, by the way, is Petitioner's Exhibit No. 25 I am referring to. I notice that the rate charged is $6.75 net per ton of 40 cubic feet, or 2240 pounds, shipper's option. Can you tell me how that was arrived at (handing paper to witness)? A. How
1238 the rate was arrived at?

Q. Yes? A. I can only tell you this, we were told by the Singer Manufacturing Company that the competition of the Pacific lines was such that we would have to make such a rate if we would carry their products by the Suez, and we decided that the rate was a fairly acceptable one and we agreed to give them that rate.

Q. I call your attention to Petitioner's Exhibit 16 for Identification, which is a rate book of Funch, Edye & Company with your name on it, and it purports to show the
1239 rates charged in this traffic—this is dated, by the way, January 1, 1910,—and call your attention to the rate on sewing machines to Manila; it appears to be $8. Is that the rate on sewing machines now (handing exhibit to witness)? A. That is not the rate at the present time, to the best of my knowledge.

Q. Was that the rate at the time this contract was made?

MR. KIRLIN: The 27th of November, 1912.

A. I should say it was.

Q. That was the rate? A. So mentioned in the tariff.

1240 Q. Then at the time this contract was made it was a departure of $1.25 from the tariff rate, was it? A. Yes.

Q. Do you know what the present rate on sewing machines is? A. I have it in my pocket and I can tell you. (Consulting memorandum). The tariff rate is now 42 and 6.

Q. To Manila? A. No, it would be $10.50 to Manila.

Q. $10.50 to Manila? A. Yes, the tariff rate.

Q. Do you mean to say that shippers not under contract shipping sewing machines to Manila paid $10.50, whereas the Singer Manufacturing Company pays only $6.75? A. I

know of no others outside of the Singer Manufacturing Company shipping sewing machines. 1241

Q. That is the rate which any shipper of sewing machines not under contract would have to pay, isn't it; that is what you mean by the tariff rate? A. I do not mean that; I mean it would apparently be so, but it depends on the origin of sewing machines if there were other sewing machines. I mean to explain we might not get $6.75 from manufacturers, if there were such, because the lines would have to absorb that rate in order to get it away by the Suez.

Q. Are there any other manufacturers? A. I do not know that. 1242

Q. You mean it is your policy and would be your policy to equalize between shippers getting cargo to New York? A. We have to do that in order to meet our competition.

Q. What competition do you mean? A. I mean the Pacific lines.

Q. You have to do that on all lines of goods? A. Yes.

Q. Suppose a manufacturer in the East has to pay more to get his raw material to his factory than the manufacturer at Chicago would have to pay to get his raw material there, do you equalize that? A. No, we cannot take that into consideration. 1243

Q. Why not? A. Because we do not know that; we would not know that.

Q. If you were going to adopt this paternalistic attitude, why don't you have to take into consideration all the elements of cost?

MR. KIRLIN: Is it necessary to characterize our efforts to meet competition as paternalism? I thought you wanted us to meet competition.

A. I think possibly that was because we have to take the shipper's say so as to the rate we have to make in order to bring shipments by the Suez in competition with the Suez lines. 1244

Q. That is, you take their word for it? A. We have to to a very large extent. They come to us and tell us manufacturers in Europe are in a position to put their goods on the market at a lower cost than they are here, and to meet that we have to meet those conditions.

1245 Q. You get all that information about cost from them? A. From the shippers; we do not know the details of manufacturing.

Q. I understand then that the $10.50 rate to Manila is the basic tariff rate that would control unless some concession were made on account of the point of origin; is that correct? A. That is correct, yes.

Q. And if there was a shipment of sewing machines which originated at some inland point involving carriage by rail to New York, the expense of that rail haul would be deducted from your $10.50 rate in order to equalize with the Singer
1246 plant at Elizabethport, is that right? A. That is correct, yes. We not only have to absorb that, but the rate by the Pacific would be lower the further west we go.

Q. That is, the trans-continental and Pacific route would be cheaper the further west you go? A. Yes, sir.

MR. BALDWIN: On account of the length of the haul, I suppose?

THE WITNESS: On account of the length of the haul.

Q. You do not make the rate, even at the rate you charge the Singer people on their sewing machines, you do not get
1247 all their business, do you? A. I think we do under this contract. You must remember the wording of the contract.

Q. I see, Mr. Goodwin, this contract reads all the shipments of sewing machines and parts via New York. That would not preclude them by its terms from shipping by the trans-continental route, would it? A. Yes, it would except for this modification here (indicating paper).

Q. Would a shipment from Elizabethport to the Far East by the trans-continental railroads and the Pacific lines be via New York? A. No.

1248 Q. That would be without the terms of this contract. Didn't they expressly reserve that right? A. They expressly provide they could ship overland in order to save time. That is the modification I was trying to call your attention to.

MR. KIRLIN: Via New York means sending them via New York.

THE WITNESS: We are supposed to get all their shipments except when shipped overland.

MR. BALDWIN: You mean because it takes less time?

THE WITNESS: Because it takes less time. I might mention that is another item, the difference in the item of insurance as compared with Pacific lines, the quicker time, and the Pacific rates are lower than the shipments via Suez. 1249

MR. BALDWIN: What percentage of the shipments of the Singer Company have to go by the Trans-Pacific?

THE WITNESS: That we would have no knowledge of.

MR. BALDWIN: Very small, isn't it?

THE WITNESS: I should say it was very small. 1250

Q. I call your attention to Petitioner's Exhibit 26, which is a contract between Barber & Company and the Singer Manufacturing Company, for all their shipments via New York to Shanghai, Hong Kong, Kobe and Yokohama at the same rate, and ask you if that contract permits them to ship via the Pacific line?

MR. KIRLIN: What is the date of that?

THE WITNESS: December 26th, 1912.

A. No, that contract is not meant to do so, but if they requested it we would not have any objections. 1251

Q. What is the significance of the phrase "via New York?" A. The significance of what?

Q. "Via New York?" A. That means via Suez, via the Conference Lines, shipping via the Conference Lines.

Q. Does not this mean that the contract only applies to such of their goods as go via New York? A. No, they have got to ship all of their goods via New York.

Q. You did not negotiate this contract, did you? A. No.

Q. I call your attention to Petitioner's Exhibit 27, which is a contract between Barber & Company and the Standard Oil Company of New York for all their shipments of lubricating oil, wax, grease, stove goods, lamp ware, and other general character from New York to the Straits Settlement, Philippine Islands, China and Japan from August 1, 1912, to July 31, 1914, inclusive. I notice that the rate on lubricating oil, grease and wax named in this contract is 23/9; that is 23 shillings and 9 pence, isn't it? A. Correct. 1252

Q. What is that in American money?

1253 MR. KIRLIN: Did you give the date of that?

MR. MONTGOMERY: No, the contract is not dated apparently, but it is August 1, 1912, to July 31, 1914, so it is in effect now apparently.

A. About $5.75.

Q. I notice that this tariff Petitioner's Exhibit 16 for identification shows the rate on lubricating oil and grease to be $7 to Manila. Do you know whether that is the present tariff rate (handing exhibit to witness)? A. I can tell you if you will allow me to look at this tariff.

1254 Q. Is that paper you are referring to a revision of this exhibit? A. Yes, sir, it has been changed several times I think since.

Q. And what you have in your hand is the going tariff? A. What I have in my hand is the going tariff.

Q. May I see it? A. Yes, sir (handing to Mr. Montgomery). The tariff is revised from time to time. We have to change our rates all the time. When they get too involved we draw up a new tariff. The rate is $7 there in the beginning, isn't it?

Q. $7, I notice.

1255 MR. MONTGOMERY: I ask to have this paper that the witness has produced marked for identification.

Marked for Identification Petitioner's Exhibit 31.

Q. Can you tell me when this rate of $7 to Manila was made on lubricating oil? A. No.

Q. Do you know whether it was in effect when this contract was made with the Standard Oil? A. I do not know, sir; I do not know exactly when these tariffs were changed; they have been changed so often.

1256 Q. I understand your present tariff is a charge to everybody not under contract then would be $7 to Manila, and to the Standard Oil $5.75? A. To the best of my knowledge we have all shippers of oil under contract at the same rate as the Standard Oil Company, so our tariff rate is really a dead letter.

Q. What others have you under contract? A. We have the Vacuum Oil Company.

Q. Have you a copy of their contract? A. No. I may have it in the office.

Q. Can you produce that? A. Yes, sir. 1257

Q. What others? A. Mitsui & Company and Marsily & Company.

Q. Why do you continue to quote the higher rate in your tariff? A. We have our freights to guide us, and as conditions arise where we have to meet competition we do not reduce those rates; we meet special conditions.

Q. After all is said and done, if an independent shipper of oil came to you to-day and was not under contract with you and was not willing to make a contract with you, he would have to pay the $7 rate to Manila, wouldn't he? A. He would be guided by the exigencies of the berth as to how 1258 badly we needed cargo.

Q. I will put it in this way, in order to quote him any other rate than the $7 rate, if a casual shipper came to you you would have to take that up with your Conference here and get the consent of all the other lines in order to depart from that $7 tariff? A. That is right.

Q. When these contracts were made with the Singer Company and the Standard Oil Company, in each instance the authority had to be obtained from the Conference to make these rates, did it not? A. Amongst the agents of the Conference. 1259

Q. And no member of the Conference would be permitted to make any concession from the tariff except by the unanimous consent, would they? A. That is right, yes, sir.

Q. I notice this Exhibit 31 for identification shows the rate on lubricating oil and grease to Singapore to be 27 and 6, whereas this contract, Petitioner's Exhibit 27, with the Standard Oil, shows the rate to be 23 and 9. Can you state what that difference is in American money? A. About 90 cents.

Q. And the same rate, I notice, to China and Japan, that 1260 is to say, 27 and 6, and for some reason or other, Singapore, China and Japan, and $7 to Manila, those are the tariffs. The contract makes 23 and 9 to all the ports? A. Yes, sir.

Q. I notice this contract provides a rate of 22 and 6, that is 22 shillings and 6 pence, on stove goods and lamp ware. I do not find that quoted in your Exhibit 31? A. We have not any tariff rate on that.

Q. Has there never been a rate on stove goods? A. I do not believe we have ever had a rate on stove goods, no, sir.

1261 Q. I notice that the rate on lamp ware, you have the classification lamp ware and lanterns in this Exhibit 16 for identification, the old tariff of 1910, and that provides it shall be 32 and 6 to Singapore and 32 and 6 to China and Japan, whereas this contract with the Standard Oil lumps lamps and stove goods together—it does not say anything about lanterns—and provides a rate of 22 and 6; that would be a difference of 10 shillings in the rate on lamp ware, wouldn't it?

MR. KIRLIN: And stoves.

1262 A. It makes a difference of 10 shillings.

Q. That would be a difference of 10 shillings? A. Yes, sir.

Q. And that would be the rate you would quote on lamp ware, wouldn't it, to a casual shipper? A. Yes. The Standard Oil Company, I must point out to you, load a great many full cargo ships, and we have to accept practically the rate they ask or we don't get the business at all.

Q. Do they load very many full cargo ships with lamp ware? A. No, but the steamers they load, they load about twenty-two million a year, I think, to the Far East, all pro-

1263 vide for a general cargo option of 10 to 15 per cent., and under that 10 to 15 per cent. option they can ship lubricating oil, stove goods, lamp ware, etc.

Q. I do not think I quite understand, Mr. Goodwin, what you mean by this option? A. When chartering their steamers to carry their case oil their charter provides for an option of 10 per cent., which gives them the privilege of loading 10 per cent. of the total capacity on such steamers with lubricating oil, wax, stove goods, lamp ware and any other commodity which they may wish to ship.

1264 Q. And they avail themselves of that? A. They do; excuse me, they would if we did not contract with them.

Q. And for that reason and because of their large size and large shipments and power you are not able to get as much out of them as you are from a small shipper? A. I do not think that is the point.

Q. I do not care whether it is the point or not; that is true, isn't it? You are not able to get as much out of the Standard Oil Company as you are out of the casual shipper, is that true? A. That is correct.

Q. And that is in the last analysis a reason why the Standard Oil is charged less, isn't it? A. We could not get any part of their contract unless we took their stoves and lamp ware. 1265

Q. In other words, you could not carry any of their case oil or lubricating oil or anything of that kind unless you agreed to give them a very favorable rate on such things as their lamp ware, is that right? A. I do not know how to answer that question.

Q. In other words, you would not carry any of their case oil or lubricating oil or anything of that kind unless you agreed to give them a very favorable rate on such things as their lamp ware, is that right? A. Probably not. 1266

Q. And that is the reason for making this low rate on lamp ware? A. I presume so.

Q. What do you consider the words "lamp ware" to mean in this tariff? A. Mostly chimneys, glass ware; a very light cargo.

Q. And that difference in favor of the Standard Oil of 10 shillings would be what in American money? A. 10 shillings would be about $2.35.

Q. And the rate to Manila I notice is $8 in the tariff as against 22 and 6 in favor of the Standard Oil. What would that difference amount to in American money? 22 and 6 would be $5.40 in American money, wouldn't it? A. Yes, sir. 1267

Q. And that would give a difference of $2.60 in favor of the Standard Oil to Manila, wouldn't it? A. I suppose that is right. I would like to mention if we maintained our tariff rate on that class of goods the Standard Oil would have the same advantage by shipping on their full cargo steamers.

Q. But you would not be responsible for it, would you, Mr. Goodwin? A. No, I do not suppose we would. 1268

Q. Do you know, Mr. Goodwin, about what percentage of cargo is carried by shippers who have contracts with you? A. I have never gone into that question; it must be a very small percentage.

Q. Take lubricating oil, you have contracts with all the lubricating oil shippers? A. So far as I know, yes.

Q. Does that move in large quantities? A. In very large quantities.

1269 Q. In very large quantities? A. Yes, sir.

Q. And that all goes under contract? A. I should say so, yes, sir.

Q. Take lamp ware, does that move in large quantities? A. No, so far as I know, the Standard Oil Company are the only shippers of lamp ware.

Q. Take sewing machines, you ship all sewing machines under contract, don't you? A. Yes, sir.

Q. And they all move under fairly large shipments, don't they? A. Fairly large.

1270 Q. Mr. Goodwin, in answering my question you had in mind, of course, contracts of the kind that we have been talking about, that is, for a period of time, a year or two, or something of that kind. You also make another sort of contract, do you not? A. We do.

Q. And that is for a shipment of a certain amount of cargo within a given period? A. Yes, that is right.

Q. And you ship a good deal of cargo under such contracts, don't you? A. It is a very small percentage of the total.

Q. A very small percentage of the total? A. Yes, sir.

1271 Q. What kind of shipments make up the largest proportion of your cargo; I do not mean the kind of articles, but I mean the three kinds of shipments; as I understand it, time contracts, contracts for a given amount to go within a given period or by specific steamers, and third, cargo shipped without any previous arrangement at all but simply shipped by a given steamer; is that correct? A. That is correct.

Q. Those are the three methods you have? A. Yes, sir.

Q. Of dealing with your customers? A. Correct.

1272 Q. Under which one of those three forms of dealing is the large proportion of cargo carried by your lines? A. I should say the last mentioned; that is, where no contracts exist at all.

Q. What class of cargo do you carry in that way, Mr. Goodwin? A. Well, we carry all sorts of miscellaneous cargo made up of one hundred and one different things under the head of general cargo.

Q. That would be manufactured goods mostly? A. That would be manufactured goods mostly.

MR. BALDWIN: Mr. Goodwin, aren't you mistaken that your business not subject to contract is the largest proportion of your carriage? 1273

THE WITNESS: No, I should say not, because one article we carry is manufactured steel, and we have not got steel under contract.

MR. BALDWIN: If you eliminate steel what do you carry?

THE WITNESS: Case oil and lubricating oil.

MR. BALDWIN: And that is under contract?

THE WITNESS: We have case oil contracts and lubricating oil contracts, yes, sir. 1274

Q. Steel you say is not under contract; you mean it is not going under contract at this particular time; is that it? A. It has not for a long time past.

Q. You have carried steel under contracts for so much, to go during a given period, haven't you? A. We have done that, yes.

Q. Up to when? A. Two years ago or eighteen months ago.

Q. About eighteen months ago? A. Yes, sir.

Q. The United States Steel Products Company is the main shipper of steel, is it not, to the Far East? A. Yes. 1275

Q. Are there other shippers of steel in large quantities? A. We had a shipment last month of 900 tons by the Lackawanna Steel Company.

Q. The United States Steel Products Company now declares all of their shipments to a given steamer, is that correct, or aren't they shipping by the Conference Lines to-day? A. We advise them how much steel we can handle on any particular boat, and if it suits their convenience they give us that amount of steel.

Q. You state you carry a given quantity, but no more and no less? A. We solicit a given quantity, yes. 1276

Q. If they have that particular quantity that it is convenient to ship, you carry it, and otherwise you do not carry any steel, is that it? A. We carry steel for others if there is any steel to be had.

MR. KIRLIN: You carry whatever they have for you.

Q. You have room in your steamer for so much steel? A. We need so much steel to load the steamer properly.

1277 Q. And up to that amount you carry? A. And up to that amount we carry.

Q. And you advise them as to that as to each steamer? A. Yes.

Q. But that is not under any contract or arrangement at all? A. No, no contract at the present time.

Q. There is a general understanding that you do that, isn't there? A. A general understanding of what?

Q. With the Steel Company that you would do that, that you would advise them of the space and give them an opportunity to ship? A. Yes, I think so.

1278 Q. Eighteen months ago the time contract with the Steel Company expired? A. About that time, yes, sir.

Q. And no new time contract was entered into with them? A. Not to my knowledge.

Q. Was there any contract entered into with them since that time for shipments for given amounts to go during given periods? A. I do not know of any contract, no.

Q. Then, up to eighteen months ago, what was the proportion of that contract cargo, that is, cargo carried under time contracts or contracts for a given amount to go during a

1279 given period, bore to cargo carried not under any contract at all? Is that clear? A. I have never worked up any such data, sir. I do not remember what proportion of case oil we carried up to a period of say eighteen months. That would have a very large bearing on our contract cargo carried.

Q. Roughly speaking, could you estimate it? A. I could not give any figures. With our bulk cargo we could not load these steamers at all; we are dependent on a certain amount of bulk cargo, such as steel, case oil and lubricating oil; without such cargo we could not maintain a regular service.

Q. I do not see the significance of that. You are not now

1280 under contract with the Steel Company, and yet you get steel on practically every steamer, don't you? A. We do.

Q. And up to the time this suit was begun, and afterwards, you were under contract with them for all their shipments, weren't you? A. Not for all their shipments, no.

Q. Did you have a time contract with them? A. Yes, I think so.

Q. Didn't that provide for all their shipments during a given period? A. No, we never could undertake to carry all their shipments.

Q. Can you produce a copy of the contract that expired with the Steel Company about a year and a half ago? A. I do not think there was ever a contract drawn up. Any contract that was made was made on the other side, and I have never seen it. 1281

Q. Why was that negotiated on the other side? A. I do not know.

Q. I understand the general proposition to be that the agents here made all the rates and all the contracts? A. We do, with the exception of a few, such as steel and case oil.

Q. Is case oil made on the other side? A. We make the contract here, but we do not make the rates. 1282

Q. You do not make the rates on case oil here? A. No, sir.

Q. Who does make them? A. We get authority from the other side.

Q. Why is that? A. Because they are afraid we will take too low a rate.

Q. You do make them fairly low to the Standard Oil, don't you? A. We have to meet competition.

Q. Who made up this tariff, Petitioner's Exhibit 31? A. The current tariff was made up by the American Asiatic and adopted; this is simply a copy of the old tariff with various changes, a recapitulation of changes. 1283

Q. That is the current tariff now? A. Yes, sir, so far as we know.

MR.. MONTGOMERY: We offer that in evidence.

Marked Petitioner's Exhibit 31.

Q. Mr. Goodwin, can you look at this Exhibit 16 for identification, the tariff book of January 1, 1910, and tell me what the rate on automobiles was? A. There is a rate inserted here of $8.25 to Manila. 1284

Q. How long was that rate in force? A. I do not think it has ever been changed; it may be $8.75 now.

Q. I notice this new tariff just offered shows the automobile rate $8.75 to all ports? A. It may have been advanced half a dollar last year. Those rates were necessitated by the lower rates put in via Pacific Line.

MR. MONTGOMERY: We offer in evidence Petitioner's Exhibit 16 for indentification, the tariff dated

1285 January 1, 1910, heretofore marked Petitioner's Exhibit 16 for identification.

Marked Petitioner's Exhibit 16 in evidence.

CROSS EXAMINATION by Mr. Kirlin:

Q. Mr. Goodwin, you have said that these tariffs were intended chiefly for guidance in fixing rates. Won't you explain a little more at length what you meant by that? A. When an inquiry is put before us we have quite a number of conditions to consider, the principal one of which is our overland competition; secondary to that is our Trans-Atlantic
1286 competition and shipment to the U. K. and Continent for transshipment, and the world-wide competition of manufacturers.

Q. That is the other competition the American shipper has to meet? A. That is the competition the American shipper has to meet.

Q. In order to land his goods in the Far East? A. Yes, sir, exactly. After we have disposed or agreed upon a rate that would appear to be favorable, as compared with the overland and with the Trans-Atlantic competition, we give
1287 the shipper that rate, and it very often transpires that the shipper comes to us and tells us he has a cable from the other side, that European competitors are getting a lower rate, and unless we can give a lower rate we will lose the business. In order to meet that we quote a still lower rate in order that we may still get the business.

Q. That is, the tariff is habitually departed from to meet actual necessities of shippers and the competition of these other two methods of transportation? A. Exactly.

Q. And there had been, as I understand it, so many modifications of the tariff of 1910, Petitioner's Exhibit 16, that
1288 you eventually had them all transcribed into this later tariff, Exhibit 31? A. Yes, sir.

Q. Exhibit 31 was put out somewhat recently? A. Within the last month.

Q. Since 1910 has there been a substantial rise in the freight markets?

MR. BALDWIN: I object to that as immaterial.

Q. I do not mean cargo freight, but the general cargoes of the world? A. Yes.

Q. Roughly, about how much?

MR. BALDWIN: I object to that. He is not shown to be familiar with the rates all over the world. 1289

Q. You have been connected with Funch, Edye & Company for a great many years, haven't you? A. Seventeen years.

Q. They have a very large charter business as well as managing a large number of lines? A. Yes, sir.

Q. Are you thoroughly familiar with freight rates? A. I think so.

Q. Have the rates in Exhibit 31 been increased over the tariff in Exhibit 16, the rates of the tariff of 1910, Exhibit 16, in any such proportion as the proportion advanced in the freight markets of the world during that period? 1290

MR. BALDWIN: I object upon the ground that it calls for a conclusion of the witness; without competent data as to what the world rate is, and it is not material or relevant, and he has not been properly qualified.

A. No.

Q. You stated in answer to questions which had to do with the tariff of 1910, that you modified the tariff to meet the exigencies of your customers' business. Does that apply also to the last tariff, Exhibit 31? A. It applies at all times. 1291

Q. You said, in answer to Mr. Montgomery's question, that the tariff stands, except as you feel required to modify it on account of the burden falling on the shipper owing to their point of origin. Do you also modify it with a view to the exigencies of business, as you have explained, that is, to enable the shipper here to meet the foreign competition? A. Yes, sir.

Q. Such modification, I understand it, is made not for one or two or particularly for large shippers, but for shippers generally when you are satisfied of their good faith? A. Absolutely. 1292

Q. In other words, you try and keep as close to your shippers as you can? A. We foster the trade all that is possible.

Q. Some questions were addressed to you as to the rates quoted to casual shippers of lubricating oil and grease.

1293 Are there any casual shippers of those products to the Far East? A. I do not know of any.

Q. You have already said that you know of no casual shippers in sewing machines? A. I do not know of any.

Q. The sewing machines in the contracts to which reference has been made is with the Singer Company, I believe? A. Yes, sir.

Q. If any other sewing machine company desired to make a contract with you on the same terms, would you do it?

MR. BALDWIN: Objected to; it is entirely irrele-
1294 vant.

Q. Is it your policy? A. It is our policy.

Q. Is it your policy to contract at the same rate? A. Under similar conditions, yes, sir.

Q. With reference to the steel you say that you notify them when you have a ship on the berth about what quantity of steel you can handle, and solicit the shipments? A. That is correct.

Q. Whatever they may have available for that ship up to that amount? A. That is correct.

1295 Q. Is that for your advantage or for their advantage?

MR. BALDWIN: I object to that as incompetent and immaterial; it is a mere conclusion of the witness.

A. I think it is to mutual advantage.

Q. You need the weight in order to trim your ship properly and economically? A. That is correct.

Q. And they, of course, need space to forward a certain part of their products? A. Yes, sir.

Q. Do they make outside shipments of full cargoes? A. A great many.

1296 Q. What you get for the economical stowage is only a proportion of the business to the Far East? A. Yes, sir.

Q. You mentioned four shippers, I think, with whom you had contracts for lubricating oil and grease. What is their relative value as shippers, that is, what proportion of the shipments do these different owners bear to the other? A. A very small proportion.

Q. What is their rank and extent of shipments, how do they rank, one, two, three and four per annum? A. I should say the Standard Oil Company of New York, one; the

Vacuum Oil Company, two; Mitsui, three and Marsily four. 1297

Q. How much in proportion does Marsily ship as compared with the Standard Oil? A. With the Standard Oil?

Q. Yes. A. It is so small I do not think I can say; I do not think I can get it down to a percentage basis.

Q. It is a very small proportion? A. It is an infinitesimal proportion.

Q. As much as one per cent.? A. No.

Q. They get the same rate, do they, as the Standard Oil? A. The same rate.

Q. So you are willing to make shipments for large shippers or small shippers, provided they are all on other- 1298
wise the same footing? A. Yes, sir.

Q. And at the same rates? A. Yes, sir.

Q. What is the highest rate that prevails now to points in the Far East under the tariff, Exhibit 31? A. 42 shillings and 6 pence, which is the equivalent of $10.50.

Q. Have you made a computation showing how much freight that rate furnishes to the vessel per ton per hundred miles? A. I have.

Q. How much is it? A. It is eight cents a ton per hundred miles. I must add to that to Japan, I have taken the 1299
Japan mileage.

Q. Eight cents a ton based on the Japan mileage? A. Yes, sir.

Q. To Singapore it would be less than that, would it? A. It would be more.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. You obtain that by simply determining the rate by the number of miles? A. Yes.

Q. What is that Marsily Company, a corporation? A. I presume so. 1300

Q. Where does it have its principal place of doing business? A. New York.

Q. Are they engaged entirely in the export business to the Orient? A. No, they are engaged in all directions.

Q. And confine themselves entirely to oil or oil prducts? A. I think so.

Q. They are general shippers? A. They are general shippers.

Q. In other words, they are a commission and brokerage house? A. A commission house.

1301 Q. They are relatively small shippers over your line, are they not? A. No.

Q. Don't they ship considerable of their products over your line? A. Not to the Far East; I believe they ship to South America, but I am not acquainted with that.

Q. On these same lines? A. No, sir.

Q. Do you mean to say this Marsily Company only ship the oil products over your lines? A. That is the only line I am aware of, yes.

Q. You say that you solicit the business from the United States Steel Products Company for such space as you have
1302 available for that kind of product, is that right? A. Yes.

Q. Who determines the rate? A. The rates are arranged on the other side.

Q. I know, but is it a rate they say they will O. K., or a rate you say you will take? A. It is a rate which we agree on the other side.

Q. Then the function of your conference here is simply to notify how much space you have got? A. Yes.

Q. A boat? A. Yes.

Q. Have you any information as to how that rate is ar-
1303 rived at on the other side between the conference there or the principals and the Steel Products Company? A. How it is arrived at?

Q. Yes. A. The Steel Company representatives in London—

Q. How is it arrived at? A. You mean the amount of freight?

Q. Yes. A. The Steel Company is given the European rates.

Q. The Steel Company is given the European rates? A. The Steel Company is given the European rates.

1304 Q. Then if the rate which is quoted to the Steel Products Company is less than your tariff rate here on the steel products, it is because of the difference between your tariff rates here and the rates quoted on the other side? A. Our tariff rates here are tariff rates and steel rates—

Q. You do not understand. If the agents here take freight from the Steel Products Company, you know what you are going to get, don't you, here? A. Yes.

Q. And you collect your freights here, don't you? A. Yes.

Q. If that rate is less than your tariff or printed rate that you have here it is arranged for by the principals on the other side? A. Yes. 1805

Q. And they do not consult you about it? A. No.

Q. You say that the rates quoted to the Steel Products Company are the same rates obtaining in Europe? A. Yes.

Q. You mean from what point in Europe? A. The English ports.

Q. From English ports? A. From English ports.

Q. Does it have any relation to the length of haul at all? A. I do not know how they arrive at their rates.

Q. The English rates by what line? A. The Blue Funnel Line, I believe it is; I do not know the lines engaged in that business. 1806

Q. You mean lines in this Conference? A. No; I do not believe any of the New York lines are engaged in it.

Q. Do you know whether the rate from England quoted to the Steel Corporation is the lowest or the highest rate then obtaining from England? A. I do not know.

Q. You do not know that, do you? A. No, sir.

Q. Do you ever offer the Steel Products Company the full capacity of your vessels? A. No. 1807

Q. Do you mean to say you never have? A. We have chartered steamers to them.

MR. BURLINGHAM: Who is "we?"

THE WITNESS: Our principals.

Q. Boats belonging to some one of these Conference Lines, is that the idea? A. Yes.

Q. Is that frequent? A. A good many boats have been loaded that way.

Q. Who fixes the charter rate for the boat that is chartered? A. The owner and the Steel Company. 1808

Q. The owner? A. Yes.

Q. Is it a rate that is determined by the Conference? A. No, sir, it is outside of the Conference.

Q. That is entirely outside of the Conference? A. Outside of the Conference entirely.

Q. That does not always apply, does it, that the boats chartered to the Steel Products Company have been done by the individual owner? A. So far as I know, yes.

1309 Q. Weren't there six boats chartered by the Isthmian Line in this Conference to the Steel Company? A. We had nothing to do with that here.

Q. Weren't there six boats chartered by the Conference afterwards that assumed the loss? A. I do not know whether it was six, there were some steamers.

Q. There was a case in which some boats at least in which the charter was taken in pursuance of the authority of the Conference, wasn't there? A. Over on the other side.

Q. What is that? A. We had nothing to do with that here. We have no knowledge of it here until we are advised
1310 it has been done.

Q. Those boats are boats in which the principals then of this Conference arranged for the chartering of the Steel Products Company, and the result of which charters they assumed the right on the other side as your principals? A. I do not know what the arrangement was.

Q. How did you first learn there was such a transaction? A. Because I was called upon to load one of the steamers.

Q. When was that? A. I think it was 1911, January or February, 1911.

1311 Q. Called upon by whom to load? A. I was instructed by my employers to load here; that is the first I knew of it.

Q. What line? A. The Indra Line.

Q. One of their boats? A. As I recollect it.

Q. With reference to these oil rates, Mr. Goodwin, you say in answer to Mr. Kirlin's question the rate you would quote to the Standard Oil Company or to the Vacuum Oil Company you would also quote to any other company who would offer freight under similar conditions, don't you? A. Yes, sir.

Q. Do you mean to say you would offer commodities of like volume? A. No, if they would confine their shipments to the
1312 Conference steamers.

Q. But in the case of a casual shipper of oil who would not thus confine his shipments to the Conference, he would not get the benefit of the rate you would give to the larger company? A. I do not know any such.

Q. That would not be your policy, would it, unless he would confine himself? A. I cannot tell at this time.

Q. You have been telling in answer to Mr. Kirlin's questions what the policy of the company was. I am now asking

what would be the policy with reference to a casual shipper? 1313
A. Will you repeat that question?

The Stenographer read as follows:

"Q. Do you mean to say you would offer commodities of like volume? A. No, if they would confine their shipments to the Conference steamers.

Q. But in the case of a casual shipper of oil who would not thus confine his shipments to the Conference, he would not get the benefit of the rate you would give to the larger company? A. I do not know any such.

Q. That would not be your policy, would it, unless 1314
he would confine himself? A. I cannot tell at this time."

Q. What is your answer? A. We charge the tariff rate, I think.

Q. What is that? A. We charge the tariff rate, I think.

Q. In answer to a question of Mr. Kirlin, as I understand it, you testified that your policy was to adjust your rates to meet the chartered rates? A. On lubricating oil. You are talking of lubricating oil?

Q. On any goods? I suppose that would apply to all your 1315
rates, would it not? A. No, I do not think so. I do not think I said that.

Q. With reference to fixing your rates by absorbing the rail rate at the point of origin, do I understand that the Conference fixes its rates always, having in mind the point of origin of the commodity? A. Yes, when any particular lot of cargo comes.

Q. In other words, if you wish to meet the competition of the Trans-Continental and Pacific Lines, if they are in competition with you, you have got to take what the shipper tells you about the rate he would have to pay of laying the goods 1316
down by the other route? A. No, we do not have to accept it altogether; we can see what rates are being charged from the point of origin and we can figure that rate to New York and then make a competitive rate, and then if that competitive rate is not sufficiently low then we have to take the shipper's word as to the other conditions.

Q. What other conditions? A. Conditions of manufacture, conditions of manufacturers' competition on the other side.

1317 Q. What shipper of any importance that has supplied you with definite information of the cost of his doing business in order to sell his products in the Orient in competition with the manufacture of like articles on the other side? A. We have to take their word for it.

Q. Name one who has supplied you with any such definite information? A. I think Allis-Chalmers.

Q. You say you "think so?" A. The General Electric Company, the Westinghouse Company, Takata Company.

Q. Where is their place of business? A. Down here in Wall Street.

1318 Q. Name all you can? A. All the machinery representatives or manufacturers.

Q. Let me understand it. They come to you and supply you with data showing the cost— A. I did not say data.

Q. That was my question? A. I said we had to take their word for it.

Q. In other words, they come to you and say in general terms "You have got to give us this rate in order to meet our competitors on the other side?" A. Yes, sir.

Q. And you take it? A. And we take it.

1319 Q. Is that statement made to the individual agent, or is it made to the Conference here? A. Made to the agent who is negotiating that particular business.

Q. Then before you meet, or if you quote them a rate to equalize these conditions, what do you do—report it to the Conference? A. Take it up with the associates.

Q. You mean the Conference, don't you? A. The Conference agents, yes, sir.

Q. Upon this bare statement of theirs that they have got to have a particular rate, you give them a particular rate? A. We do; I do not say we always do, but we do where we

1320 think it is bona fide.

Q. How do you differentiate between the conditions you think are bona fide and the conditions which you think are not? A. We trust some people more than others.

Q. The firms that you have mentioned are firms in whose statements you rely, and each time they make a representation as to a necessity of a rate satisfactory to them by reason of competition, you take in all those necessities? A. I think so, yes.

Q. Do you have any investigating bureau or means of ascertaining whether the statements made by any others are true or are not true with reference to foreign competition? A. No. 1321

Q. Well, as a matter of fact, Mr. Goodwin, is not the reason you take their word because they are very large shippers and you are anxious to get their business? A. We are anxious to get all business large or small, sir.

Q. That is not my question. A. What is your question?

Q. (read) Well, as a matter of fact, Mr. Goodwin, is not the reason you take their word because they are very large shippers and you are anxious to get their business? A. No, not particularly. 1322

Q. What information or facts do you rely upon to test the credibility of their statements as to that? A. More a matter of faith than anything else.

Q. What special information do you rely upon that you have faith in their statements and not faith in the statements of others, what sources of information do you exhaust? A. Some people we have had long business dealing with and others we have not; we are naturally more partial to those we have, I suppose. I do not know of any other reason.

Q. You do not know of any other reason, do you? A. No, sir. 1323

Q. In no instance do you make, directly or indirectly through your principals on the other side, any investigation to know whether or not these competitive conditions that they propound to you are true or not?

MR. BURLINGHAM: He has not said so.

MR. BALDWIN: I am asking the question.

A. No, we do not.

Q. Assuming at the point of origin the commodities of any one of these favored shippers is say somewhere in the middle west, whether you would grant the rate or not would depend upon how much of the rail rate you would have to absorb, would it not, or would you absorb it any way in order to get the business of the Trans-Pacific route? A. There is a rate level below which we cannot go. 1324

Q. It would all depend entirely, wouldn't it, how far west the commodity originates upon which you quote the rate? A. Yes.

1325 Q. In other words, your opportunity of meeting the Trans-Pacific rate is more feasible and more available to you than it is to the Atlantic shipper? A. Yes, nearer New York.

Q. You had here some years ago an agreement, the Conference Lines had an agreement with the Trans-Continental lines? A. I believe they did, yes.

Q. Do you remember when that ceased to be in operation? A. I took charge of this department in 1907, and I just came in at the end of it; that is all I can remember of it.

Q. And you have no other recollection about it, I suppose? A. A very faint recollection. I hardly got here before it
1326 ceased.

Q. These rates, the modification or change of the rates that you testified here that have been made from time to time according to the exigencies of the business? A. Yes.

Q. Do those rates change according to whether or not you have active competition? A. We always have active competition, sir.

Q. What active competition do you have outside of the Trans-Continental and Trans-Pacific lines by way of the United Kingdom, where there are transshipments? A. What
1327 other competition do we have?

Q. Yes, general competition? A. All the continental lines, the Austro-Americana, the Hamburg-American line, the North German Lloyd, the White Star, Cunard Line; we have them all. When they are short of cargo they go in for business.

Q. How long has that happened during the last few years? A. It has happened every year except the last two years. It is beginning again.

Q. The last two years how often has it happened? A. What do you mean?

1328 Q. How often have any of the boats of any of those lines — A. There are clearances of goods at all times by transshipment lines.

Q. Does that apply to any particular commodities? A. No.

Q. How does the transshipment route, that is to say, where they transship, how does the rate compare with the rate of your line over the Suez Canal? A. Those rates are usually higher because it is a quicker service.

Q. Whether or not the vessels that offer for general cargo 1329
or otherwise have shipments to take place is conditioned very largely upon the fact that it is a quicker service, isn't it, faster vessels to the United Kingdom and faster vessels from there on to the Orient? A. I think so.

Q. And that kind of commodities goes where time is more or less the essence of the shipment, doesn't it, or the reason for the shipment? A. Not altogether, sir.

Q. What inducement would there be for the casual shipper to send by that route where goods must be transshipped if the rates are higher? A. Simply the solicitation of the transshipping lines who are after cargo. 1330

Q. If the rates are higher, what inducement would it be to the shipper? A. I said as a rule they are higher; they are not always higher.

Q. When they are higher, what would the inducement be? A. The question of time and interest.

Q. And that applies, does it not, to a peculiar kind of commodity? A. No.

Q. And it would depend more or less upon their getting there in time to fulfill a contract within a specified time? A. That might be a feature. 1331

By Mr. Montgomery:

Q. I think you mentioned the Hamburg-American line by which this transshipment takes place in Europe? A. Are they one of them?

Q. Yes? A. Yes.

Q. That is the same Hamburg-American Company that you represent as part of the United States & China-Japan Steamship line? A. Yes.

Q. Would you know whether the Hamburg-American and its associates in the Far Eastern trade is under any agreement with the Hamburg-American line in regard to the transshipment rates? A. It is all one and the same concern. 1332

Q. Do you know whether there is an agreement between the lines engaged in the two traffics? A. I do not know about that.

Q. Of course, if it is the same line, so far as the Hamburg-American line itself is concerned, any competition that they engage in is competition with themselves, isn't it? A. Yes.

1333 RE-CROSS EXAMINATION by Mr. Kirlin:

Q. Mr. Goodwin, in the instances where your shippers come to you and want a modification of rates in order to enable them to meet foreign competition, do they say, for instance, always say, "We hear the rate on steel or transformers, or whatever the product may be, from U. K. or continental ports is so much, and we must have a reduction to meet that," or do they say "My competitor is making a bid to deliver the material necessary for the establishment of an electric plant or the building of a bridge, as the case
1334 may be, at Tokio for so many dollars a ton, and in order to enable me to meet that I have to have a modification of your rate of so much so as to enable me, counting my cost on your freight rate, to meet the bid that is being made of the delivered product abroad?"

MR. BALDWIN: Objected to. I think the witness should be allowed to state what was said, if anything was said. I object to it as grossly leading and putting the answer practically in the witness' mouth. I object upon the further ground that there is nothing
1335 to indicate one of the two propositions as the one that bears upon the case.

A. The shipper as a rule comes to us at the beginning of this negotiation with a specification of a certain plant that he proposes to lay down, and the cost of insurance, at some particular point in the East. We look it over and pick out the heavy lifts and awkward character and we name him a freight rate. He very often requires a refusal for sixty or ninety days, and, as the time approaches, has to have an answer to the refusal, he comes to us and says, "We have a cable from our people in the East and say we have got to get
1336 our price, otherwise we will not get the business from England or Germany, wherever it may be." We ask him what he will be able to get the manufacturers to cut their price, if anything, and he, as a rule, says they agree to cut their cost, and we, as a rule, cut our freight rate and hope the man will get the order and we will get the carrying.

MR. BURLINGHAM: That is usually it?

THE WITNESS: Yes, sir.

RE-DIRECT EXAMINATION by Mr. Baldwin: 1837

Q. Mr. Goodwin, you spoke about plants. Do you mean some plant they expect to install there? A. Yes, some machinery or electrical plant or workshop that they expect to build there.

Q. That would only apply to some complete plant? A. No, not necessarily; any shipment of some proportion; it would not apply in the case of soap.

Q. Take for instance, the Allis-Chalmers, they manufacture their own products? A. Yes, sir.

Q. Do you mean to say you would ask them whether or not 1838
their manufacturer would cut the rate if you cut yours? A. Would I go to them?

Q. You said they would come to you? A. No, the commission house, the representative of the commission house.

Q. I did not understand you. How would the commission house that represents the manufacturers be in a position to tell you to what extent, if any, the Allis-Chalmers or any other one of these large corporations could lay down their products independent of the freight rate and the carrying rate in any one of the Oriental ports? A. I am afraid I lost that question? 1839

Q. Mr. Goodwin, I understand you they want you to cut your rates of carriage so that they could compete with foreign competitors in laying down their plants or commodities in Oriental ports, c. i. f.? A. Yes, sir, that is correct.

Q. In order to do that, they want you to concede something from your rate, generally speaking, because the foreign competitor has some advantage somewhere in some way that they want to meet, and ask you to help them meet it by a reduction in your rates; that is it, isn't it? A. Yes, sir.

Q. You ask the commission houses or representatives or 1840
the agents who represent them how much they themselves will concede? A. No, we do not ask them.

Q. What do you say? A. They come to us and say "the manufacturer has agreed to cut the rate; won't you cut your freight rate; everything helps."

Q. It is the commission house you try to represent and not the manufacturer? A. We are trying to place the order in the United States, that is what we are trying to do.

1341 Q. If the commission house or the person who negotiates the freightage is asked by you to find out what his customer will concede, it must be because you want to help him get the business, isn't it? A. Yes, sir.

Q. Do you understand the question, Mr. Goodwin? A. I did not until just explained to me. I am not representing the commission men, I am helping get the order placed here in this country; I do not care who I am helping, I am trying to get the business for the line, the carriage of the freight.

Q. You stated in answer to Mr. Kirlin's question, you
1342 said to this person "How much would his manufacturer"—that is the word you used—"concede." Who did you mean by that, the person who was the actual shipper, or the person who represented them in procuring the shipments; did you mean the commission merchant or the actual shipper? A. I do not know that I said I asked how much the manufacturer would allow; we do not know how much difference there is in one man's price and his competitors; we know there is a difference, and they are trying to make up that difference.

Q. In one of these two modes which Mr. Kirlin stated of the proposition that would be made to you, who would make
1343 the statement to you, for instance, the actual shipper like the Allis-Chalmers Company, or some freight broker or commission merchant? A. Freight broker or commission house.

Q. In turn then you would ask him how much his people would concede, is that it? A. No, he tells us his people have conceded.

Q. Conceded from what? A. Conceded from their original price.

Q. In other words, the price that they had quoted to the people or the customer in the Far East? A. Yes.

Q. Is that right? A. Yes.

1344 Q. And he would come to you then and give you the rate they had quoted? A. No.

Q. How would you arrive at the fact of how much you would concede? A. Simply a case of good faith, that is all.

Q. How would you arrive at how much you would concede? A. It would depend very largely upon the exigencies of the product, I should think, how much we wanted that particular cargo.

Q. Then the real reason in conceding a rate would be to

help yourself rather than to help the shipper, is that right? 1845
A. Well, one is dependent on the other I think.

Q. Is the manufacturer who wishes to ship his product to the Orient dependent upon your exigencies here for cargo? A. No, not altogether.

Q. Is cement one of your products that is shipped in fairly large quantities over your lines? A. I do not believe we have had a shipment of cement in four or five years.

Q. Four or five years ago did you ship largely, were there large shipments over your lines of cement? A. I think we had one large shipment of 35,000, one contract.

Q. Is that all? A. That is the only contract, I think, that 1846
has come to this country.

Recess.

Afternoon Session.

HERBERT BARBER, recalled.

Direct Examination continued by Mr. Baldwin.

Q. Mr. Barber, on your former examination you were 1847
interrogated largely about the parties defendants here and their respective relations to each other; I will ask you a few questions with reference to the agreement between the conference and conferees, set forth in the petition. With reference to this Conference of the agents here of the various lines, were you accustomed to attend the weekly meetings yourself? A. I am.

Q. And you attended as the representative of the various interests that you have already testified you were identified with? A. Yes, sir.

Q. In Exhibit 4, which is the pooling rules set forth in the 1848
petition in this case, there appears among other things a provision as follows: "Special returns or rebates to shippers. To be deducted from the total freight upon which such allowances are made in the freight account." Does that mean a system of rebate separate and distinct from the provision for deferred rebates that have been testified to by Mr. Sparks? A. It does not.

Q. Is it a part of the provision of the general scheme for deferred rebates? A. It was, yes.

1849 Q. What did special returns or rebates apply to; how did they arrive, and under what circumstances? A. The rebates applied simply to the westbound freight.

MR. KIRLIN: The defendants object to any inquiries about the effects of pooling or rebates westward, on the ground that the arrangements for the rebates and pools are all made abroad, and are not within the purview of the statutes; therefore it is irrelevant. It is agreed that this objection need not be repeated, and all this testimony is to be taken subject to it.

1850 Q. Do you understand the question? A. No, I do not understand the question.

Q. If you will notice the pooling rules as appearing on page 71 of the petition, there is a statement which reads: "Deferred Rebates. To be deducted in one total from the total of the Freight account." And then we have the special caption: "Special Returns or Rebates to Shippers. To be deducted from the total freight upon which such allowances are made in the freight account." Apparently, that would appear that there were two systems of rebates, deferred re-
1351 bates and a special return of rebates, as I would read it, to shippers? A. There were.

Q. What were those special rebates? A. The special rebates or returns were made to certain shippers at Singapore, which were finished and done away with some three or four years ago.

Q. During the time that they were in operation, what were those special circumstances that would entitle the Singapore shippers to the special returns? A. Special firms at Singapore were in the habit of chartering their own steamers when it suited them, to load cargo from the Straits Settlement to
1352 the United States. In consideration of the special returns or rebates given to them, they agreed to stop chartering any outside steamers and to confine all their shipments to Conference steamers.

Q. You mention these "special firms;" who are they; who were they? A. I don't know.

Q. Was Dodwell one? A. No.

Q. Do you remember who they were?

MR. KIRLIN: Mr. Dodwell gave all that. 1353

THE WITNESS: The whole thing is in Dodwell's evidence.

MR. BALDWIN: If it is covered I do not care to repeat it.

Q. Why was it abandoned; because they then did make the agreement not to charter special steamers? A. What?

Q. Why was it abandoned three or four years ago, as you say? A. Because we made better terms; it paid us better to finish that agreement, and it was finished; it paid the lines better to get out of it. We made an agreement to pay a lump 1354
sum and get out of it.

Q. Do you remember what that lump sum was? A. I cannot tell you; I do not remember what it was.

Q. Was there any special rebate that that applied to? A. No.

Q. No special rebates of any kind to brokers? A. No.

Q. You are sure of that? A. No; I know of nothing of that sort.

Q. Mr. Barber, were there not special circumstances under which the rebates were returned to special brokers? A. I don't remember any. 1355

Q. None with reference to the navy contracts, with the department? A. No.

Q. In order to refresh your recollection about that, I call your attention to the minutes of the Conference of June 8th, 1905, which says: "The agreed brokerage on navy department freight has been one and one-quarter per cent., but beginning with the Shimosa it is agreed that a deferred rebate of an additional one and one-fourth per cent. will be paid at the end of the year provided the Conference Lines secure all of the freight of the navy department up to the end of the year." Is that a provision for an additional brokerage 1356
rebate? A. That is additional brokerage for the broker; that is not a rebate.

Q. "It is agreed that a deferred rebate of an additional one and one-fourth per cent.;" it says here? A. It is wrongly expressed; it is no rebate at all.

Q. How do you account for the fact that in your minutes you people have put it down in this form, as though it was a rebate of an additional one and one-quarter per cent.? A. It is wrongly expressed; that is all I can say.

1357 Q. Do you remember whether the brokerage then, the payment of brokerage in view of that resolution appearing in your minutes, was deferred? A. The brokerage was deferred; it says "deferred brokerage;" not "deferred rebates."

Q. Do you remember whether or not there were any other instances where there was deferred brokerage, then; where there was an additional deferred brokerage? A. I do not.

Q. Mr. Barber, if you will turn to page 30 of the petition, paragraph 11, you will note that it provides: "No steamer of a greater carrying capacity than 8,000 tons all told is to be loaded under this Agreement, except by the unanimous
1358 consent of the Agents." Can you state whether or not that provision still is adhered to, limiting the size to 8,000 tons, unless by the unanimous agreement of all? A. That still applies; but I am not sure whether it has within the last few months been increased, the tonnage; it may be more than 8,000 tons now, but such a provision still applies.

Q. You say it has been changed very recently then? A. Within the last few months, I think it has been changed.

Q. Has the change been by reason of an agreement entered into by the signatories? A. The steamers are getting
1359 larger, and it was thought better to increase them; I am not quite sure about that; I can refresh my memory in the office and tell you. We have a large steamer coming on next month ourselves, which abrogates that point, and we want to look into it.

Q. My question is whether or not the agreement has been changed, not whether or not you are actually adhering to it; has the agreement been changed? A. I am not sure about that.

Q. Anyhow, up to within the last few months it has not been changed, and it has been lived up to? A. That is right.

1360 Q. Mr. Barber, turn to page 28 of the petition, and you will notice the provision: "All engagements shall be reported to one another by the Agents in Conference the first business day of each week, and copies of freight lists are to be exchanged not less than three weeks after the departure of each steamer." Do you remember whether there was that exchange of freight lists and the reporting of those engagements? A. I don't know; I presume they were taken care of; I never heard anything to the contrary.

By Mr. Montgomery. 1861

Q. Mr. Barber, you have been asked to produce the agreements between the Conference Lines and the American-Manchurian Line; what about those? A. I have not got them; we have not got them.

Q. Are there not copies of those agreements in New York? A. I have no copies.

Q. Do you recall when the agreement between the American-Manchurian Line and the Conference Lines was first made? A. I think about four years ago.

Q. You think about four years ago? A. About four years 1862
ago, I think.

Q. In 1909? A. About that, I think; yes.

Q. I show you Petitioner's Exhibit 22 for identification, entitled "Heads of Agreement"; dated November 16th, 1910, and ask you if that is the one you have in mind that was entered into? A. That is it; it is 1910, about three years ago.

Q. That is the one you had in mind when you said about four years ago? A. Yes.

Q. That, I notice, refers to another agreement, to a previous agreement? A. There is what I had in my mind in this 1863
agreement: "The size of steamers employed in the trade to be limited in their capacity for loading on the berth to 8,500 tons dead weight."

Q. That raises it from 8,000 tons to 8,500 tons? A. Yes; this is an agreement subsequent to the one I refer to; it was probably a year before that the original agreement was made; this refers to "Eastward and Westward." This agreement made with the Manchurian Line was before.

Q. And this "Heads of Agreement," Petitioner's Exhibit 22 for identification, relates to the Eastward and Westward both, as you understand? A. Yes. 1864

Q. I notice by its title, or at least by its first paragraph, that it is intended to work from Atlantic ports of U. S. A. to the Far East? A. It says, "Westward voyages from the Far East to New York," on the second page.

Q. You refer to clause 6? A. Yes.

Q. That apparently refers to both the Eastward and Westward business? A. Yes; but the agreement made was originally a year before that, and referred to the eastbound business only.

1365 Q. Having refreshed your recollection, when was the Manchurian Line started? A. I don't know.

Q. Wasn't that about 1907? A. Well, I could not tell now. It was a few years; it was running about a year or so in November. I was in London when the agreement was made with them. I was present at the time it was made in London. If they met in 1907, probably the arrangement was made at the end of 1907 or 1908.

Q. I notice in the answer of the Bucknall Steamship Company, it is stated that August, 1907, was the date that the line was started; you would be willing to accept that as cor-
1366 rect, I suppose? A. That is likely it, yes; August of 1907.

Q. As the date the American-Manchurian Line started. Now I ask you how long, if at all, was the Manchurian Line in competition with the Conference Lines before an agreement was made? A. I think you can find that in November, 1908, there was an agreement made.

Q. Having refreshed your recollection by the date that the Manchurian Line was started, can you now state about the time that the agreement, the original agreement between the American-Manchurian Line and the Conference Lines was
1367 made? A. I think it was in November or early in December, 1907.

By Mr. Kirlin.

Q. To become effective when? A. In the following month, January, 1908; at the beginning of the year.

By Mr. Montgomery.

Q. To become effective the 1st of January following? A. Yes.

Q. The agreement between the Manchurian Line and the
1368 Conference? A. Yes.

Q. And was that in regard to both the westbound and eastbound business? A. No, eastbound only.

Q. Where was that made? A. In London.

Q. What has become of all of the copies of that agreement? A. I don't know; I was present when the draft was drawn up, and I had one of the copies that the stenographer made, which I carried in my pocket until it wore out. Where it is now I don't know; it covered about a sheet of paper like you have in your hand, just one sheet of the memorandum agreement.

Q. Were not copies of it given to all of the signatories after it was signed? A. No, I did not get any copy. 1869

Q. Do you remember who the signatories were; did the Barber Line sign it? A. No.

Q. Did anybody sign it for the Barber Line? A. It was signed by probably either Mr. Chambers or Royden, or Adamson, for the Conference Lines.

Q. Did you ever know what was in the agreement? A. Yes, but I haven't it on paper.

Q. Do you know whether any copy was ever kept in New York of that agreement? A. I don't remember; I don't think a copy was ever sent to New York with the signatories on it. 1870

Q. Mr. Barber, in the conduct of your business, you admitted the Manchurian Line to your Conference, did you not? A. Yes.

Q. And questions were continually coming up, were they not, for construction of this agreement? A. No, not particularly.

Q. They were frequently, were they not? A. We knew what it was; the agreement provided how many sailings each line was to have; that is the main part of it; the number of sailings according to the total number that was dispatched. 1871

Q. And you got to know it so well you did not need to have a copy? A. We did not need to have a copy, no.

Q. You did not learn it by once reading it; you must have had a copy for some time? A. I carried it in my pocket for a year or two.

Q. Then what became of it? A. It wore out and I threw it away.

Q. This agreement, Petitioner's Exhibit 22 for identification is a modification of that agreement, is it not? A. Evidently, yes. 1872

Q. Is it substantially the same as that agreement, excepting the modification in the number of sailings, and so on? A. It is, yes.

Q. I notice that clause 4 reads as follows: "Clauses as in previous eastward agreement expressing mutuality in working arrangement." What were those, do you remember? A. That we were all to work together to our mutual interests in the trade.

1373 Q. And since some time in November or December, 1907, then, the American-Manchurian Line has been a party to the agreement, Petitioner's Exhibit 22 for identification, or one substantially similar? A. Which is the one you are speaking about now?

Q. This one, or one substantially similar; is that true? A. That is so, I think; I work under the arrangement.

Q. You say you do? A. Yes.

Q. And you have since January 1st, 1908? A. That one is 1910.

1374 Q. I say, however, that previous to November 16, 1910, an agreement quite similar to this was in force between the Conference Lines and the Manchurian Line? A. Yes, sir, it was.

Q. Can you state what the differences were? A. That item of the number of sailings.

Q. Can you think of anything else besides the number of sailings that was altered in this agreement of 1910, that you have? A. And the reference to the westbound business.

Q. And the reference of the pooling of the westbound freight? A. Yes.

1375 Q. They had not been in the westbound business until the date of this Conference, until 1910? A. Until 1910, yes.

Q. And since then they have pooled? A. The westbound, yes.

Q. And for the purpose of that pooling they have a representative meet with the westbound agents at New York, do they? A. No.

Q. The westbound agents do meet at New York for the purpose among others of arranging details of the westbound pool, don't they? A. Let me understand; I will correct that answer, no; the westbound agents or some of our clerks meet,

1376 or used to meet, to simply register the arrivals of the steamers westbound and the number of days they are discharging.

Q. That is, to satisfy each other as to the details? A. Yes, so that data could go to London to enable them to make up their pooling arrangements.

Q. To check up each other on the ship for the purpose of this division engineered from London? A. Yes.

Q. When did that cease to be done? A. It has not ceased entirely yet, because some of the agents still meet.

Q. How many? A. All but Volckens; Volckens and the 1377
Bucknall Lines do not meet with us.

Q. But the Conference Lines all do meet for that purpose here in New York? A. Yes.

Q. How often do they do that? A. Sometimes once a month, sometimes one in two months, just to keep a record of time the ship has been discharged.

MR. MONTGOMERY: I offer Petitioner's Exhibit 22 for identification, in evidence. This Exhibit 22 for identification was produced by Mr. Kirlin, he having received from Mr. Dodwell in response to our request 1378
when Mr. Dodwell was on the stand.

Received in evidence and marked Petitioner's Exhibit 22.

MR. MONTGOMERY: I also offer a paper entitled "Memorandum to be attached to the agreement of November 16th, 1910, and supplemental thereto;" which is a paper produced by Mr. Kirlin, received from Mr. Dodwell with Exhibit 22 in evidence.

Received in evidence and marked Petitioner's Exhibit 22-A.

MR. MONTGOMERY: I also offer paper entitled, "Ex- 1379
tract from minutes of meeting held the 14th of June, 1911," also produced by Mr. Kirlin, received from Mr. Dodwell.

Received in evidence and marked Petitioner's Exhibit 22-B.

Q. Mr. Barber, I think there has been some testimony here in regard to the chartering of steamers by the United States Steel Company, and I understood the statement to have been made that where they charter the steamers from any of the owners of the Conference, they were completely chartered by 1380
those owners; is that always true? A. It was not so in 1911.

Q. How was it in 1911? A. In 1911, there was an agreement made in London, by which, I think, six steamers were provided by the Conference Lines including the Manchurian Line, at an agreed rate of freight per ton, dead weight; and those steamers were loaded on the berth by the Conference agents and the profit or loss of those steamers was to belong to the Steel Company.

1381 Q. Was the charter rate made at the charter market, or below or above? A. It was made at a flat rate at the time the agreement was made.

Q. Was that above or below the charter market obtaining at that time? A. It was thought, at the time, it was something under the charter market.

Q. Wasn't it understood to be a little below? A. I don't know what they thought in London, but I thought it was below.

Q. You say the profit or loss was shared by the different Conferences together as a whole? A. The loss on the
1382 steamers, you mean?

Q. What was the agreement? A. The agreement was made so that the loss or profit should be shared equally.

Q. That is, shared by the Conference and the Manchurian in some ratio? A. No, no; the steamers went into the pool the same as the other steamers belonging to the Conference loading on the berth, and, therefore, as those steamers made a good deal less under their charter with the Steel Company, made a great deal less earnings than the regular steamers loaded on the berth, in the total at the end of the
1383 pool, all owners had to pay their share of the loss those steamers made.

Q. How did the Manchurian Line come in on that if the steamers were pooled; was it a separate pool? A. No; they provided two of the steamers.

Q. And they were not pooled? A. They had to pay their loss or profit on it.

Q. Was it a loss or a profit? A. That was their own lookout; they agreed to give it to steamers at a rate per ton, 23 and 9 pence per ton, dead weight.

Q. What did the Conference do; make a loss or profit?
1384 A. Relatively they made a loss, because it was relatively what the other steamers made; these steamers made a good deal less money than the boats on the berth, and, therefore, the owners of those four steamers took from the rest of us the difference to make up their proportion.

Q. And why was that done; why did you make that arrangement with the Steel Company? A. I don't know.

Q. Was it in pursuance of a clause in one of your agreements which recites that where outside tonnage is sought, that the Conference Lines shall supply it? A. No.

Q. There is such a provision in one of your agreements, 1385
is there not? A. Where?

Q. In one of your agreements; in your traffic agreement or your pooling agreement? A. I don't recall now.

Q. On page 29, paragraph 9, you will note it provides:

> "That where it is considered advisable to book cargo for account of the Associated Lines, which, through lack of accommodation on the regular steamers might otherwise fall into the hands of competitors, such cargo shall be taken care of by chartering additional tonnage, the result to be divided in proper proportion between 1386
> the various interests, and the loading commission credited to the agents pro rata to the share in the trade which each of the signatories hold, based on their respective number of sailings."

It was in pursuance of that paragraph in the Eastward agreement, was it not, that these charters were made to the Steel Company? A. I don't think so.

Q. Wasn't it the purpose of the Conference to prevent competitors from carrying that steel cargo? A. I don't think so.

Q. In regard to the pooling, it was not the freight money 1387
that was pooled; it was the money that was paid by the Steel Company for the charter; it was the charter hire that was pooled, was it not? A. That is so, yes.

Q. What became of those boats when they got out to the Far East, do you know? A. I don't know; they loaded back again, or went into other trade.

Q. As Conference boats? A. If there was room on the western berth, they would come on the western berth; I think they all went over to the western berth.

Q. By the Conference? A. Yes, I think so; yes. 1388

By Mr. Baldwin.

Q. Mr. Barber, I do not quite understand the reasons for entering into this Manchurian Line relative to the chartering of these vessels; you say there were six all told? A. Yes.

Q. Four furnished by the Conference? A. Yes.

Q. And two by the Manchurian Line? A. Yes.

1389 Q. And according to your judgment, the chartered rate to the United States Steel Products Company was less than the charter rates prevailing at the time the charter was made? A. Yes.

Q. If it was not pursuant to some provision in the Eastward agreement or the pooling agreement that applies thereto, what was the reason for letting the Steel Company have these vessels at a rate which, relatively speaking, would bring a loss to the Conference? A. I don't know.

Q. You were one of the principals, weren't you? A. Yes; I think they were crazy, myself.

1390 Q. Weren't you considered at the time? A. No, not until they practically had made the arrangement.

Q. If it was outside the provisions of the agreement, they could not bind you without your consent, could they? A. No.

Q. When did you first learn of it? A. I learned soon after they had made the arrangement; they cabled me what they had done.

Q. Who was it that pretended to act for you in such an important concession? A. Mr. Chambers.

1391 Q. Who was Mr. Chambers? A. One of our correspondents and one of our owners in Liverpool.

Q. You personally were not consulted about it in advance? A. No.

Q. And he had the power and authority to bind your firm to an agreement of that kind? A. Yes.

Q. And neither then nor since have you ever been told by him or anybody else who knew the facts as to the reason for the chartering to the Steel Products Company under such conditions? A. They thought it was good policy to do so.

Q. Why; what would constitute the policy that would

1392 make it good? A. I really don't know myself; I think they were wrong.

Q. Don't you know enough about it to state that the real reason back of it was that for such a large and powerful corporation as the Steel Products Company, and having such a large volume of business, you didn't want that taken by any independent competitor? A. I do not think that is right.

Q. You do not think it is? A. No.

Q. Do you know of any reason why you people otherwise should shoulder a loss relatively speaking? A. I don't know of any reason, no. 1893

Q. You thought it was a sort of a gratuitous act on the part of the other signatories and your partner? A. Yes; they wanted to get in solid with the Steel Company.

Q. Out of pure friendship? A. Yes, I think so, yes.

Q. Do you remember when it was that those six vessels were chartered? A. The arrangement was made in November or December, 1910.

Q. In December? A. In November or December, 1910, and they were to be furnished in 1911. 1894

Q. Was it by reason of the provisions in paragraph 5 of Petitioner's Exhibit 22, which is the agreement, you will remember, that you identified here, which provides, among other things, that the United States Steel Products Export Company, "In event of the United States Steel Products Export Company requiring to have an interest in the trade from New York to the Far East either by way of sailings or participation in results, it is agreed that the Conference Lines and American & Manchurian Line stand together for the purpose of meeting any such requirements, and neither party to act in this connection without regard to the general interest, it being agreed that the arrangements, if any, as to sailings with U. S. S. P. E. Co., shall be for joint account in third shares between the Conference Lines and the American & Manchurian Line, that is, two-thirds being for the Conference Lines and one-third for American & Manchurian Line." Is that the reason for it? A. It is along those lines, apparently, that they made the arrangement. 1895

Q. You say "apparently"; have you no knowledge of that at all, although one of the signatories? A. They evidently thought it was an advantage to them to have these steamers loaded up that way, and they gave the Manchurian two, and they took four. 1896

Q. "They thought"; who do you refer to? A. The owners in London and Liverpool.

Q. As I understand it, this business of chartering those vessels at a rate you considered less than the charter rate, necessarily involved a relative loss as compared to what you

1397 were getting on your other steamers for the same service? A. Yes.

Q. Having that in view, do you wish to be understood as saying that the signatories, including yourself, allowed that transaction for this apparent loss staring you in the face for no other reason than because they thought it would be to their advantage in some other way? A. Apparently that is the reason.

Q. Was it ever suggested what the other way might be as to the advantage; where it would arise? A. To have the good will of the Steel Corporation.

1398 Q. You mean as to getting all their business? A. In other directions; the Steel Corporation does business all over the world, and these ship owners have steamers going to other parts of the world besides the Far East.

Q. I am trying to get what you had in your so far as you knew at the time, to allow a concessio[n] im-portance as that, in doing business at a relat[ive] the benefit of the Steel Corporation; have you [an]other to say about it? A. Nothing further.

By Mr. Montgomery.

1399 Q. Mr. Barber, do you recall that there were some negotiations with the railroads in 1905 or 1906, between the Conference Lines and the railroads; that certain agreements were made, and among them was an agreement signed by R. P. Schwerin; do you recall that circumstance? A. I know there were some such agreements at that time.

Q. Have you copies of them? A. I do not think we have.

Q. Do you know where to find them? A. No; they are obsolete, long before this case came up.

Q. I understand they were; but they were of historical
1400 value in the case; have you searched for them? A. We cannot find them.

Q. You cannot find any of them? A. No.

Q. You don't know where one could be obtained? A. I do not.

Q. Are any agreements existing now with any of the railroads with regard to the division of traffic or making of rates, or anything of that sort? A. No.

Q. Or with other steamship lines than the Conference Lines and the Manuchuian Line? A. No. 1401

Q. You have none at all? A. No, not in this trade; I am speaking of this trade. There is an agreement with Funch, Edye & Company, with reference to the division of traffic for Aden and the Red Sea ports, between their Hansa Line and our line.

Q. Those are regarded as Far Eastern ports? A. No, they are ports of call; we can each call on our way out there, on our way to China and India.

Q. Does that agreement involve any reciprocal arrangement between the Hansa Line and yourselves, if they wish to engage in Far Eastern business? A. No; it only agrees as to division, as to how much each should take. 1402

Q. Not as to the Far East, but to the Red Sea ports? A. Yes.

Q. Bombasa and Zanzibar? A. Aden and Zanzibar.

Q. Any agreement at all about their keeping out of your other territory? A. No, nothing about that.

Q. You made a statement, I think, Mr. Barber, when you were testifying before, in regard to Gellatly, Hankey & Company; I think you said they were a corporation? A. I did.

Q. Do you want to correct that? A. Yes; I find they are not a corporation; they are simply a co-partnership. 1403

Q. That is the only statement that you care to correct in your testimony, is it, Mr. Barber? A. I have not read the testimony; I don't know anything about it.

Q. Their being a co-partnership does not alter what you said about their connection with the line, or anything of that sort? A. No.

Adjourned to Friday, January 2, 1914, at 10:30 o'clock A. M.

1404

1405 New York, January 2, 1914.

Met pursuant to adjournment.

Present—GILBERT H. MONTAGUE, Special Examiner.

APPEARANCES:

(Same as before.)

JOSEPH T. LILLY, a witness called on behalf of the Petitioner, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Baldwin:

1406 Q. Mr. Lilly, you reside here in New York? A. Brooklyn.

Q. Are you a member of the firm of Norton & Son? A. I am.

Q. How long have you been a member? A. Since 1907, August 1st.

Q. Who constitute the firm? A. As at present constituted?

Q. Yes? A. Mr. E. M. Norton, Mr. S. S. Norton, Mr. John D. O'Reilly and myself.

Q. And how long has the present membership been in existence? A. Since about 1911.

1407 Q. What change has there been in the membership? A. The admittance of John D. O'Reilly as a member of the firm.

Q. And prior to that time, the Norton firm, with the exception of that one person, had been in existence how long here? A. Well, I went into the firm August 1st, 1907.

Q. Where do they have their place of business? A. New York Produce Exchange Building.

Q. What is their business; I mean to say, what does it embrace? A. Steamship agents and brokers.

Q. And to what particular steamers connected with these defendants in this suit, have they any relation as agents or

1408 otherwise? A. The American-Manchurian Line.

Q. Is that the only one? A. The only one, yes, sir.

Q. When was the American-Manchurian Line started? A. In August, 1907.

Q. How was it constituted? What made it up, how was it made up? A. The Bucknall Steamship Lines, Limited, supplied the steamers.

Q. The Bucknall? A. Yes.

Q. And under what circumstances did it come into ex-

istence? A. Why, the United States Steel Products Company had an equipment contract for Dalny, Manchuria. The contract was with the South Manchurian Railway Company. It comprised rails, trolley poles, all track equipments, bridges, locomotives and car materials. They chartered quite a number of boats, before they arranged with Messrs. Bucknall Brothers, who had a lot of new steamers just built, for which they had no employment, and started; the United States Steel Products Company found Dalny— 1409

Q. The what? A. The United States Steel Products Company found that Dalny was not equipped to handle the trade; they had to send out derricks and all of the equipment. I don't know the number of steamers they chartered before they made the arrangement with Bucknall Brothers, but probably eight or ten. 1410

Q. How many steamers did they charter from Bucknall? A. They chartered two from Bucknall Brothers, the *Matoppo* and *Karongo*.

Q. What size ships were they? A. About 8500 or 9000 tons, dead weight, I think. Then the formation of the line commenced with the steamship *Kabingo*, which loaded in August.

Q. You say Bucknall had two steamers? A. Chartered. 1411

Q. They chartered the Manchurian Line? A. To the United States Steel Products Company.

MR. KIRLIN: This is prior.

Q. Prior? A. The steamship *Kabingo* was the first steamer that sailed on the line.

Q. How many ships did the Bucknalls put into the Manchurian Line? A. Why, they put in about two steamers a month, under their contract with the United States Steel Products Company.

Q. It was simply the Bucknall steamers that made an arrangement, or through the Bucknall Brothers, is that the name? A. Bucknall Brothers, it was at that time. 1412

Q. (Continuing) Bucknall Brothers, having some contractual relation with the United States Steel Products Export Company, and that line of steamers, or those steamers operating in the trade for the Steel Products Company, they called the Manchurian Line; is that it? A. Yes; it was a contract. You see, the United States Steel Products Com-

1413 pany really furnished the cargo which established the line. After the Dalny cargo was carried the line was firmly established through the trade and running to all ports, with steel and other general cargo.

Q. Do you know whether or not the United States Steel Products Export Company had made efforts with the Conference Lines prior to their making the arrangement with the Bucknall Brothers? A. I understand the Conference Lines had an opportunity to carry the cargo. I don't believe they could agree on the rate.

Q. Were there other reasons than that? A. No other rea-
1414 son that I ever heard.

Q. Was one of the reasons that they would not furnish the proper facilities? A. Well, that would go without saying. Dalny was not equipped to handle steamers of the size required to carry the locomotives and car material; and it was necessary for the United States Steel Products Company to charter steamers in order to carry out their contract, and on the first steamers which they sent to Dalny they sent the necessary equipment, including 50 ton derricks, and equipped the port to handle cargo.

1415 Q. Then the Manchurian Line, after it came into existence, used that equipment, did it not? A. Used the equipment.

Q. The Conference Lines could have used the same equipment, couldn't they? A. I should think so.

Q. Now, wasn't there a reason in addition to that, which you have mentioned, that the Conference Lines did not have other facilities sufficient, or any boats sufficient as well? A. Didn't have the boats?

Q. Yes? A. That I don't know. I know the Conference Lines didn't furnish the proper rate, the rate they wanted
1416 to charge was much higher than the rate ruling from the other side.

Q. Do you know how much higher it was? A. I understand about $5 a ton.

Q. You say ruling from the other side; what do you mean by that? A. I mean the rates to Dalny from Europe.

Q. The Steel Products Company insisted upon the rates being on a parity with those rates, did they not? A. Yes, the Steel Products Company had a great deal of difficulty in handling the contract, because as I remember reading at

the time, the Chambers of Commerce of Great Britain and all British ports objected to the contract coming to this country, which made it very much more difficult to handle. 1417

Q. Then as a matter of fact, Mr. Lilly, the arrangement between the Steel Products Export Company and what you call the Manchurian Line, was because, among other things, they could not get a conference rate satisfactory to them and on a parity with the European rate, is that right? A. That is as I understand it.

Q. Did you have any information as to what the general demand was for facilities of the Steel Products Company, other than those which you have mentioned? A. One of the conditions they made with the Manchurian Line was that we would go to out ports. By out ports I mean ports other than Manila, Kobe, Yokohama, Hong Kong and Shanghai. 1418

Q. And the Conference Lines were not serving those? A. I don't know. It was necessary for us to serve them when we made this contract. We developed Otaru, Muroran, Cebu, Iloilo, Takubar, Tientsin, Chemulpo, Wonsan, Moji and Nagasaki.

Q. Did the Manchurian Line serve any other shippers than just the Steel Products Company? A. Oh, yes. We found that shippers were practically waiting, in addition to what we would get from the Steel Products Company, we got an equal quantity from all of the other shippers. 1419

Q. There seemed to be a general demand for that service? A. Yes. You see, the business could not be done plus a transshipment rate. It could only be done when a direct opportunity was offered.

Q. You mean transshipment at Europe? A. No, a transshipment at Kobe, Yokohama. All of the ports in the Far East are served by direct steamers and by transshipping from the ports of call of the steamers. 1420

Q. In addition, then, to the Steel Products Company's business, there was a demand for other shipments to these ports; direct shipment, I mean to say, without transshipment? A. Yes.

Q. And has the Manchurian Line had a large business, generally speaking, since it started? A. Yes. We have gone on pretty nearly every steamer, we have gone to an out port. We don't go to all of them on the same steamer; some

1421 steamers we go to three out ports, and some steamers possibly only one.

Q. Have you by the installation of this new line, increased the out port service, the service to what you call the out ports? A. Yes.

Q. After the line was formed—I think you said in 1907? A. 1907.

Q. In 1907, did it remain outside of this Conference, as a competitor? A. For some time, yes.

Q. How long? A. I can only give it approximately.

Q. That is enough. A. Possibly a year.

1422 Q. And then, somewhere in 1908, it became a member of the Conference? A. That is correct.

Q. How long did the contract between the Steel Products Company and the Manchurian Line last? A. I think the period mentioned was about three years, but Messrs. Bucknall Brothers made some arrangement with Elliman, and—

Q. With whom? A. Sir John Elliman.

Q. Yes? A. The title was changed to the Bucknall Steamship Lines.

Q. That is to say, the partnership of Bucknall Brothers
1423 was terminated and it became a corporation, is that your idea? A. Some time I think, during 1908, we were instructed to address all of our correspondence to Bucknall Steamship Lines, Limited, which I took to be the beginning of the arrangement.

Q. What effect, if any, did that have upon the Steel Products Company's contract? A. I don't know as it had any effect on the contract. We continued to carry out that contract, and that was about the time we commenced to work with the Conference.

Q. With the Conference? A. With the Conference.

1424 Q. Did you know how the arrangement with the Conference came about? A. No; we were instructed by our principals.

Q. Meaning Bucknall Brothers, Limited? A. Bucknall Steamship Company, Limited, or Bucknall Brothers.

Q. To do what? A. That it would be well to attend Conference meetings.

Q. Do you remember when it was that you began to attend the meetings? A. The early part of 1908.

Q. Who was the one of your firm that attended these meet- 1425
ings? A. Mr. S. S. Norton and myself.

Q. Did you participate regularly in all the Conference meetings and in the pools and so forth? A. We never had anything to do with the poolings.

Q. You never did? A. No, sir.

Q. In what respect did you unite yourself with the Conference, if at all? A. We attended their meetings and reported the engagements of our steamers, the amount of disengaged room, whether freight was offered freely or not.

Q. Was anything done about your sailings? A. We re- 1426
ported our own sailings. Each member reported on his steamers, to load or loading.

Q. Did you collect the freights for your line? A. Yes, sir.

Q. And was the amount of the freights collected reported to the Conference? A. No, sir.

Q. Just simply the amount of space taken and what unoccupied, is that all? A. That is about all; when the steamer sailed, whether or not the steamer was full.

Q. Before you received instructions to join the Conference, become a member of the Conference, was the competition 1427
between your line and the Conference Lines for that class of business active?

MR. KIRLIN: He said attend meetings.

MR. BALDWIN: I think I have a right to put my construction on it.

MR. SPOONER: If the witness does not object; if it correctly represents his testimony.

Q. Do you want to object to it?

MR. KIRLIN: I object to it on the ground that it is 1428
a characterization of the witness' testimony at variance with his own statement.

Q. Mr. Lilly, was your going to the Conference simply a perfunctory act upon your part, or did you enter into the general arrangements of the Conference with respect to the reporting of cargoes and the sailings; did you go there and arrange anything about rates? A. Yes, we followed their rates.

1429 Q. Did you follow their rates by reason of any agreement with them, or just simply follow them because they fixed a rate and then you followed it? A. There may have been an agreement that we were to do that on the other side.

Q. What is your understanding about it? A. Our understanding was that we were to use their rates, to follow their rates.

Q. Did you continue to do that, then, right along? A. Yes, sir.

Q. Up to the present time? A. Yes, sir.

1480 Q. And you are doing it now? A. Yes, sir; we don't always agree on rates; we frequently make contracts to carry our own contract.

Q. Does that apply to the products of any particular shipper? A. No.

Q. Have you any recollection as to the comparative rates during the time that you were in competition and after you began to attend the Conference, whether they were higher before or lower? A. The rates were the same; when we were in competition we tried to get their rates, and in many cases did so.

1431 Q. In many cases you did not, I suppose? A. In some cases we had to shade their rates to get freight.

Q. How about the establishment of rates during the time you were independent, or at least in competition, and since you have associated yourselves in some form with the Conference? Were the rates lower then, averagely speaking, than they have been since? A. Yes, the rates have been advanced slightly during the last year or two, owing to the increased cost of tonnage.

MR. SPOONER: Owing to what?

1482 THE WITNESS: The increased cost of chartering the steamers.

Q. Were the rates maintained just the same before there was this increase in tonnage?

MR. MONTGOMERY: Tonnage cost.

Q. I mean tonnage cost, yes? A. I beg your pardon?

Q. Was there an increase in rates, after you associated yourselves with the Conference, and before there was an increase in the cost of tonnage? A. I don't think so; there

was no increase in rates owing to our going in and working with the Conference. 1433

Q. You mean to say the rates were just the same all the time, when you were in competition, as they were until after they were raised, as you say, due to this increased cost of tonnage? A. Yes, the Conference rates were the same.

Q. Are you sure about that? A. As far as I can recollect.

Q. After you associated yourselves with the Conference, were your sailings curtailed any? A. No, I don't think they were.

Q. You were still allowed to have the same number of sailings that you had exercised before that? A. No, we 1434
didn't have the same number of sailings.

Q. When, do you mean afterward or before? A. Afterwards.

Q. You had less? A. We loaded about one-third of the sailings of the total number.

Q. Was that due to arrangements in Conference? A. Well, we were advised our steamers by our principals, and when they would be ready they usually went along in rotation, between and after Conference steamers.

Q. The sailings, then, were arranged so as to fit into the 1435
schedule of the Conference steamers, more or less? A. Yes.

Q. And that did bring about a curtailment of the number of sailings, didn't it? A. Well, we didn't have—we had, I think, the first year, twelve steamers.

Q. How many did you have the year before? A. Well, we had about, I should say—we had about three every two months, possibly 18 steamers.

Q. Now coming to this question of rates again, did you participate in the establishing of rates at all, in Conference? A. We were consulted.

1436

MR. SPOONER: What?

THE WITNESS: We were consulted about rates.

Q. You gave your views as to what the rates should be? A. Yes, sir.

Q. And if you were met by the Conference, then you would all adhere to those rates, is that right? A. We would say—

Q. And if they did not take your views, you would still adhere, would you not, more or less, to their list? A. At times.

1437 Q. Yes? A. We did not always do that.

Q. That was the general plan, wasn't it, Mr. Lilly? A. Yes.

Q. To adhere to their rates. Does your line ever pay rebates on your eastern traffic? A. We had to meet the conditions as we found them when we went in. We didn't issue any rebate circular.

Q. No, but did you pay? A. We found shippers that wanted 10 per cent. return every six months, I think the period was.

Q. And you paid them? A. We paid them. on the pre-
1438 sentation of a bill.

Q. That is to say, you found that after you went into the Conference, there was this outward rebate method of rebating to shippers? A. Yes, sir.

Q. And you immediately conformed to that? A. Yes, sir.

Q. And then you persisted in that right along, met those conditions right along? A. Until the rebates were discontinued.

Q. When was it that the rebates were discontinued? A. The early part of 1910 or the early part of 1911, I am not
1439 sure of the year.

Q. These meetings you have testified to attending were the eastern conference meetings? A. Yes, sir

Q. Did your line participate in the contracts made by the Conference? A. Yes, sir.

Q. In what way? A. If we had a steamer on the berth having freight under the contract which was available for our steamer, we would ship by our steamer, and the same rate as specified in the contract was charged.

Q. In other words, if any of the other Conference Lines had booked space, had a contract with the shipper, and your
1440 boat was on the berth, it would go on your boat rather than the ones of the particular line that they made the contract with? A. Yes, sir.

Q. Did I understand you to say, Mr. Lilly, that the firm did not participate as agents in anything with reference to getting up the data or the divisions of the pools? A. We retained our freight and sent it to our principal.

Q. Did you furnish any data at all to the conference of agents here with respect to the pools to be made up or apportioned by the Conference, if that were done? A. No, sir.

Q. Was your firm represented at the meeting of the agents of the Westward Agents Conference here in New York? 1441

MR. KIRLIN: May it be understood that these inquiries about westward business are subject to the reservation of objections previously made?

MR. BALDWIN: Yes.

THE WITNESS: I attended one westward meeting.

Q. How about your partners? A. I think probably one or two; we had a representative present, I think, for six or seven months, probably.

Q. And what occasioned your being present at those Conferences? A. My presence was occasioned— 1442

Q. Either yourself or your partners, Mr. Lilly? A. Curiosity, probably.

Q. Nothing more? A. I don't think so.

Q. Were you invited to be present? A. We were.

Q. Weren't you at all interested in the Conference with reference to rates and so forth, westward? A. At the meeting at which I was present the rates were not discussed, merely a report on steamers which had discharged, had arrived, the number of days they took to discharge, the amount of space which was occupied by the cargo. 1443

Q. Do you know why you were invited to be present? A. I understood at the time that our people were interested in the westward business.

Q. Did you know in what respect? A. I have since heard that they were interested in every respect.

Q. In what? A. In every respect.

Q. That is, they are parties to it? A. Parties to it, yes, sir.

Q. At various meetings, then, of the Westward Conference here in New York, or the agents of the Westward Conference here in New York, either you or some member of your firm has been present and participated in some capacity? A. Some representative. 1444

Q. Yes? A. Yes. I previously testified that we only attended meetings for six or seven months. It was only during those six or seven months.

Q. What was the purpose of your attending the Westward Conference and furnishing the information? Was it for the

1445 purpose of reporting also the amount of space engaged on the westward traffic? Was that one of your reasons? A. For attending westward meetings or eastward meetings?

Q. Westward? A. No, the agents here did not know the space engaged.

Q. That was not involved then? A. No.

Q. Mr. Lilly, at the meetings that you attended, or attended by a member of your firm or a representative, weren't you called upon to furnish information as to the amount of space that was available and not taken, and the space that was taken, so that the proper units for the determination of
1446 the pool could be made up and sent abroad? I am speaking now of the Westward Conference? A. We reported the arrival of the steamer, the space occupied by the cargo.

Q. Yes. A. The vacant space, if any.

Q. Yes. A. I don't think of anything else.

Q. That was done so as to supply the requisite information to determine these pool units, was it not? A. Probably, yes.

Q. Yes. Was there a man by the name of M. T. Noblett that was connected with your line in any way? A. Yes, M. T. Noblett has charge of our Inward Department.

1447 Q. I show you, Mr. Lilly, you may look at it, a copy of your Westward Minutes of the date of May 6th, 1912. Look it over (handing paper to witness)? A. (Witness examines paper).

Q. You find there, do you not, there are a number of things that are important? A. Yes, sir.

Q. And this M. T. Noblett was connected with your firm? A. In charge of our Inward Department.

Q. And I notice here, among others, that the *Walton Hall* was one of the steamers that was reported? A. *Walton Hall?*

1448 Q. *Walton Hall?* A. Yes, sir.

Q. That is one of your lines, is it not? A. Yes, sir.

MR. KIRLIN: I object to it on the grounds previously stated.

MR. BALDWIN: I will ask to have that read into the record.

The minute reads as follows:

"MINUTES OF MEETING OF WESTBOUND AGENTS, HELD AT THE OFFICE OF MESSRS. WM. H. TWEDDELL & CO., 68 BROAD STREET, NEW YORK, MARCH 6TH, 1912. 1449

PRESENT:

MESSRS. W. H. TWEDDELL, PHILIP BARBER, R. I. TWEDDELL, representing Dodwell Lines.
M. T. NOBLETT, representing American- Manchurian Line.
R. A. SEWELL, representing American & French Line.
R. H. GOODWIN, representing U. S. & C. J. Line. 1450
MR. TWEDDELL presided.
MR. R. H. GOODWIN was appointed temporary secretary.

Meeting passed on particulars of the discharge of the following steamers:

No. 198 S/S "Walton Hall" (American-Manchurian Line).
Arrived New York, Feb. 2nd (Friday). Passed quarantine Feb. 3rd. Time for discharging commenced Feb. 5th at noon.

Total space available for cargo....	393,329	cu. ft. 1451
Empty space on arrival.....	109,859	" "
Occupied by New York general cargo	283,470	" "
(Including 2,300 tons sugar) pool units	7,087	" "

Entitled to 7 days, 5 hours plus one Sunday and one holiday.
Sugar was discharged at general cargo wharf as general cargo.
Actually occupied 5 working days, 5 hours. 1452
No. 199 S/S "Indramayo" (American Asiatic S/S Co.).
Pool units occupied by New York cargo, 8803.
Arrived New York, Feb. 18th (Sunday). Passed quarantine Feb. 18th.
Time for discharging commenced Feb. 19th at noon.
Entitled to 8 days, 19 hours, plus one Sunday and one holiday.
Actually occupied 6 days, 2 hours.
(Steamer worked holiday overtime.)"

1453 Q. Now, having refreshed your recollection from that, Mr. Lilly, it is true, is it not, that your company did, as a matter of fact, attend these meetings and report the necessary information to the Westward Conference that might be necessary in respect to your ships to make up this pool; is that right? A. Yes; we are not attending those meetings now.

Q. What is that? A. We only attended those meetings for a time.

Q. I know, but up until what time? A. I didn't think we attended as long as 1912.

1454 Q. How long before March 6, 1912, had you been attending those meetings? A. Some time during 1911 we commenced.

Q. That must have been a year or two? A. Probably, yes.

CROSS EXAMINATION by Mr. Kirlin:

Q. Mr. Lilly, prior to the time you began to carry these cargoes for the Steel Company, in the latter half of 1907, had there been any regular service from this port to Dalny? A. No, sir.

Q. Dalny was a new port, was it not? A. Yes, sir.

1455 Q. And by whom was it erected into the dignity of a port? A. The United States Steel Products Company's contract with the South Manchurian Railway brought that about.

Q. And was that at the time the Japanese were in control down there? A. Yes, sir.

Q. Prior to that, and at the beginning of that time, had it been fitted with wharves and apparatus for handling large masses of material? A. There must have been wharves there, because the steamers discharged at wharves, but there wasn't any apparatus for handling cargoes.

1456 Q. Those were new wharves, were they not? A. I don't think they were new.

MR. BALDWIN: Do you know anything about that?

THE WITNESS: I know they were there when our steamers went there.

MR. BALDWIN: Then I ask to have it stricken out, that he understands.

Q. Wasn't it a matter of general knowledge that the Japanese built new piers there and connected the railway with them, and made a terminal of the port?

MR. BALDWIN: I object to that on the ground that it is immaterial and incompetent; general knowledge, he doesn't know anything about and cannot testify. 1457

THE WITNESS: The wharves were there. They were connected by a railroad when our steamers arrived, Mr. Kirlin, and they didn't have facilities for discharging heavy cargo, and it was necessary for the United States Steel Products Company to send out the derricks.

Q. The Conference Lines at that time were not trading to Dalny, Dalny was not a regular port? A. Not so far as I know. 1458

Q. And when you said one of the reasons for chartering the steamers by the Steel Company was that the lines would not furnish the proper rates, you meant rates acceptable to the Steel Company, didn't you? A. Yes; the rates, as we understood it, were considerably higher than the rates ruling from Europe.

Q. Well, actually there was no service from Europe to Dalny, which was equipped to handle this contract, was there? A. There was evidently rates, Mr. Kirlin; I don't know about the service. 1459

Q. Anybody going from Europe, of course, would have had to establish facilities the same as the Steel Company did? A. Would have to supply derricks.

Q. Yes. Prior to the time you were instructed to attend the Conference, had there been any difficulty about the loading of the steamers; that is, the economical loading of them? A. American-Manchurian Line steamers?

Q. Yes. A. No; we had the steel, and we had the locomotives and car material.

Q. And had you enough general cargo to load them economically? A. With the locomotives and car materials, up to the time we attended the Conference, we had. 1460

Q. How about times subsequently? A. Well, it was necessary to get rid of some of the steel, and in doing that we got general cargo in place of it.

Q. You mean, there was too much steel for the economical loading of the ships separately? A. The American-Manchurian Line ships.

Q. Yes. A. If we were compelled to carry all of the steel.

Q. So, as the matter worked out, you found you were get-

1461 ting more steel than was advantageous, and needed more general cargo? A. That was the position we would have been in as soon as the cars and locomotives were carried.

Q. When did that part of the carriage under the contract end? A. Some time during 1908.

Q. 1908; and then after you were instructed to attend the Conference meetings, part of the steel was loaded to the other steamers, and you got general cargo? A. Took our turn on the berth, and—

Q. Under the Conference contracts and outside? A. Yes, sir.

1462 Q. Locomotives and cars occupied a relatively larger cubic space than the other steel products, such as rails and frogs and switches and tools, did they not? A. Yes, the steamers loaded by the American-Manchurian Line with the locomotives and car materials, and rails and other steel products, were filled and rode down to their marks.

Q. But without the locomotives and the car materials, and after they had been carried under the contract, the situation was such that steamers could not be loaded economically with the steel alone? A. Yes, sir.

1468 MR. BALDWIN: I object to that as involving a conclusion not based upon the requisite data.

Q. Well, then, explain why; explain why that is? Mr. Baldwin says it involves a conclusion. Tell us why it is, why it was that they could not be loaded economically with the steel alone, without other material? A. Because with steel alone they would be loaded down to their marks, leaving an enormous amount of vacant space.

Q. That is because the steel stows closely, I suppose, and is heavy in proportion to the space it occupies? A. A
1464 steamer of 7,000 tons dead weight, 9,000 tons measurement, would probably sail with 5,000 tons of vacant space with a full cargo of steel.

MR. MONTGOMERY: You mean 5,000 cubic feet?

THE WITNESS: 5,000 tons of 40 cubic feet, loaded down to her mark.

Q. And considerable space would remain vacant, though the steamer was down to her marks? A. Yes.

Q. What do you mean by "mark"? A. The mark is the

plimpsoll on the side of the ship, beyond which a steamer cannot load. 1465

Q. With reference to your participation in any rebate system that you found when you entered the Conference, I understand you to say that you issued no circulars? A. No, sir.

Q. By "No, sir," you mean you did not? A. We did not issue any circular, merely allowed the shippers to bill us at the end of the period for the return which they figured they were entitled to, covering shipments by our steamers.

Q. Does that go to all shippers by your steamers? A. All shippers, all shippers shipping freight on which the bonus was paid. There was considerable freight clean, without bonus, such as steel. 1466

MR. MONTGOMERY: That is, no rebates?

THE WITNESS: No rebates; steel is always booked clean rate, net rate.

Q. Without bonus? A. Without bonus.

Q. Do you differentiate between shippers who shipped exclusively by your lines or otherwise, or did you pay to everybody? A. Everybody; there wasn't any condition to obtain the bonus, it was the condition of the trade we had to meet. The shippers had to make their returns on the other lines at a certain period, and rather than accept our rates net preferred that method. 1467

Q. Now, with reference to the attendance at these meetings where the reports were made about the westbound steamers, a minute has been produced showing that Mr. Noblett was present as late as March 6th, 1912. You said it is your impression that you had not been attending that late, that far along. Is that the end of it, as far as your recollection goes? A. Yes, I don't think there can be any later minutes at which we attended. 1468

Q. Do you remember how often those westward meetings were held, in which the reports were made of space, of time, and so on? A. I understand once a month.

Q. You said you understood that your line participated in all the westward arrangements of the Conference; what is your understanding about the eastward?

MR. BALDWIN: He testified to that also, first about the eastward.

1469 Q. You had nothing to do with the eastward pool? A. No, sir.

Q. And have not? A. We have had nothing to do with the eastward pool.

Q. At any time? A. At any time.

Q. During the time that you attended the eastward meetings, was there any discussion about the number of steamers that you were to have, or did you get instructions about the number of your steamers from abroad? A. I don't recollect what instructions we got, Mr. Kirlin; it worked out that we had one steamer out of every three.

1470 Q. It was not a hard and fast limitation upon a number, but out of the number required, whatever the trade was, you had a third of it?

MR. BALDWIN: I object to it as a characterization of what the fact was.

THE WITNESS: Of three steamers, there were two Conference steamers in each and every instance.

Q. Have you operated a fixed number per annum at all times since you received the instructions to join the Conference early in 1908? A. No, the steamers required for a

1471 year or a period vary. Sometimes 36; just at present we are operating 48 steamers.

Q. Of which you are sending how many?

By Mr. Baldwin.

Q. You mean by "we" the Conference? A. I beg your pardon?

Q. By "we" do you mean the Conference? A. No, I mean the trade, all of the lines.

Q. The Conference? A. The Conference.

1472 MR. BALDWIN: That is what I mean.

By Mr. Kirlin.

Q. The Conference and your line? A. The Manchurian Line; the steamers which are operating in the trade now are 48 per year.

Q. And how many of those are you sending? A. 13 to 15.

Q. Has the Steel Company, since 1908, shipped all their shipments for China, Japan and the Philippines over the Conference Lines and the American Manchurian Line? A.

The Conference Lines and the American Manchurian Line have not been able to carry all the shipments, and they have had to charter. 1473

Q. They have chartered, have they? A. Yes, sir.

Q. Regularly, every year? A. Some years more than others.

Q. I mean, the Steel Company has chartered steamers which they have operated themselves, full cargo steamers? A. Yes, sir.

Q. To what extent have they made such charters?

MR. BALDWIN: If he knows. 1474

Q. Since 1908?

MR. BALDWIN: If he knows, of his own knowledge.

THE WITNESS: I know what steamers have been made, and when they have been chartered; but I don't know as I can say how many each year.

Q. Give us a rough idea? A. It is a matter of record; the two years could be looked up.

Q. How many chartered steamers? A. They charter to meet their requirements of the sales; some years I should say six, some years eighteen. 1475

MR. BALDWIN: You are speaking of charters from Bucknall, do you mean?

THE WITNESS: No, I mean charters in the market.

MR. BURLINGHAM: Outside.

MR. KIRLIN: Charters from the Conference Line owners.

THE WITNESS: Any owner. A charter from a Conference Line owner would be no different from a charter from any other owner. 1476

Q. If they were chartered from a Conference Line owner, would the Conference Line owner be an independent with reference to that particular charter?

MR. BALDWIN: I object. In the first place, whatever they agreed it would be under those circumstances would be the best evidence, and his evidence will be secondary, if he had any.

1477 MR. BURLINGHAM: But he has answered only with reference to his own.

MR. BALDWIN: No, sir, the question involves anybody else.

MR. BURLINGHAM: The question does, but the answer he stated, he said the Bucknall Lines did.

THE WITNESS: I said, if they chartered from Bucknall, in answer to your question.

Q. "Yes, if they chartered from Bucknall." With the exception of these steamers, of which there has been evidence,
1478 that were loaded by the Conference Line agents a year or two ago, have the Steel Company always run their own steamers, these chartered steamers? A. Yes, sir.

Q. They have not been handled by the Conference, nor gone into the Conference in any way? A. No, sir.

Q. And their relation to those chartered steamers, so far as your knowledge goes, would be the same as any other person chartering a steamer and loading her with his own product?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial; no first hand knowledge
1479 at all of any situation.

MR. KIRLIN: I am asking as far as his knowledge goes.

MR. BALDWIN: Whether his knowledge is negative or otherwise is not material here.

MR. KIRLIN: Maybe it is. Would it?

MR. BALDWIN: I object to that.

THE WITNESS: It would be the same as any other charter.

MR. BALDWIN: The charter would depend upon themselves, I fancy.

1480

Q. That is, the Conference, so far as you know, would have no more to do with that than they would with anybody's operation of loading and products.

MR. BALDWIN: The same objection.

THE WITNESS: No, sir, so far as I know.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Lilly, you say that in 1912 or 1913, the number of boats, the number of sailings, was 48? A. About 48.

Q. Is that 1912 or 1913? A. I think that commenced in 1911. 1481

Q. How many did you say you had out of that, that is, the Manchurian Line? A. 13 or 15.

Q. How was your allotment arrived at? A. I don't know; we got our steamers indicated by our principals, and loaded what was given to us. I understood our allotment was about 11/36th.

Q. Of the total number of sailings? A. Yes, sir.

Q. Of the whole Conference? A. Of the whole Conference.

Q. With reference to the allowance of bonus, you have not allowed the bonus to shippers who had been shipping over the Conference Lines or any new shippers you might have, is that the idea? A. There weren't any conditions with our allowance at all; we had to meet the condition we found in the trade in getting cargoes. 1482

Q. In other words, that condition which you had to meet was, you had to put your business on a parity with the business of the Conference Lines? A. Yes, sir.

Q. You say you did not issue any rebate circulars; do you mean by that that the Conference Lines did issue rebate circulars, but you did not? A. I understood there were rebate circulars out. We didn't issue any, as far as I know. 1483

Q. But when you state that you didn't issue any rebate circulars, you understood there were rebate circulars issued by the Conference Lines? A. I understood there were, from shippers.

Q. Were you asked by the Conference to issue rebate circulars? A. I don't recollect that we were.

Q. Isn't it a fact that you were asked, and that for reasons of your own you declined to do it? A. We always objected to rebate circulars, didn't see any necessity for them. 1484

Q. But haven't you any recollection of whether or not you were asked and urged and declined to do it? A. I have a recollection that the matter came up, but I don't know as we were urged; I think we merely stated what we intended to do.

Q. Now, with reference to this necessity of taking general cargo, after your boats had been loaded to the marks by the steel products, the same conditions would have existed

1485 whether you had been in or out of the Conference, wouldn't they? A. Yes.

Q. The necessity of general cargo? And you could have gotten general cargo for the purpose of filling the available space, if you had not been in Conference, could you not? A. I don't think we could have gotten enough general cargo; we would have had to take—

Q. You could have gotten some, couldn't you? A. We could have gotten some.

Q. Whether you got enough would depend upon the rate you quote, wouldn't it? A. No, it would depend entirely
1486 upon the amount of steel we had to carry. We would probably have had to take all the general cargo the Conference had.

Q. Probably I haven't understood your answers to some of Mr. Kirlin's questions. I understood you to say, Mr. Lilly, that by reason of the weight, we will say, character of steel cargoes, that it would load to the mark, or to your— A. (Interrupting.) Plimpsoll mark?

Q. Yes; load to the mark, leaving an amount of available space, and it would not be profitable to send out the vessel
1487 without having that space filled with other cargo, or general cargo; am I right?

MR. KIRLIN: No, sir, not that; leaving out some of the steel and replacing it by general cargo; the trouble was he had too much steel.

Q. I see; I didn't catch your question. But in any event, the necessity of either taking or leaving out steel, so that you could have this available space filled at a remunerative rate, you could have gotten general cargo outside of the Conference, couldn't you? A. We would not have had room
1488 for general cargo, if we had to carry the steel.

Q. And you say that every single boat, you always had sufficient steel to load to the mark? A. Yes, sir.

Q. Then, by making this arrangement, by going into the Conference, they would take part of the steel and leave you available space for general cargo, is that it? A. Yes, sir.

MR. KIRLIN: Not only available space, but leave the buoyancy.

Q. You could have put on extra boats, couldn't you, and distributed the steel shipments so that you could have had this available space for general cargo? A. That would not have made it any more economical. 1489

Q. But you could have done it? A. It would have increased our expense of handling it.

Q. Somebody had to bear that expense, didn't they? A. Yes.

Q. So that was one of the reasons why you went into the Conference, to divide that expense with them, is that it? A. Not to divide the expense, to enable us to get general cargo in return for the weight of cargo we turned over to them. 1490

Q. Had you had any general cargo before you went into the Conference? A. Yes, a very little.

Q. Well, did you make any effort to get general cargo before you went into the Conference? A. We made efforts to get general cargo with the first steamer we loaded, in August, 1907.

Q. Did you get it? A. A little, yes, sir.

Q. Did you find that your difficulty in getting cargo was because the shippers were tied up to the Conference on these rebate arrangements? A. No, our difficulties were that we could not cover all of the ports for the cargo which we had to carry. 1491

Q. Are you prepared to say, Mr. Lilly, that one of the reasons that you could not get as much general cargo as you wished to get was because of this rebate system that you found in vogue? A. No, I am not; I don't think the rebate system interfered one bit in our getting any cargo; I don't believe it would have interfered with it, if we had service to offer and the room to carry and make the engagements ahead, as we should be prepared to do. 1492

Q. With reference to these other ports that the Steel Company insisted should be served, which you have mentioned here, did you have general cargo for those? A. Did we get cargo for those?

Q. Yes. A. Yes, sir.

Q. You did? A. Yes, sir.

Q. You could get that outside of the Conference, couldn't you? A. Yes, but that didn't amount to very much in tonnage.

1493 Q. Well, it amounted to enough for you to try to get it, didn't it? A. Yes.

Q. Was one of the conditions you also met, other than that you could not serve all of the ports and that if you could take the shipments of one of these shippers, to say some of the ports, and could not serve them as to the others, that they would lose the benefit of their rebate; was that one of the reasons? A. I don't know anything about that, Mr. Baldwin. I don't believe the rebates interfered at all with our getting cargo. The economical handling of steamers required that we have measurement cargo to go with our
1494 weight, so that we could have her loaded on sailing, a full ship, about down to her marks. Now, if we were to carry all of the steel and the Conference Lines carry all of the measurement, I don't think that we could give the service—I know we couldn't—to the shippers that would be required; but by distributing this steel and giving the Conference steamers steel, and we taking our turn getting the measurement cargo, it should have given a much better service.

Q. When you and the Manchurian Line made this arrangement with the Steel Products Company, you were not
1495 in the Conference, were you? A. We were not.

Q. Yes. A. We were not in the Conference, we were not in the trade.

Q. Well, do you mean to say that your principals then made that contract with the Steel Corporation, or the Steel Products Company, blindly, without taking into consideration that if they carried all this steel they could not carry it profitably? A. I don't know what they thought.

Q. As a matter of fact they made the contract with their eyes open, didn't they? A. They made the contract, and probably made it with the intention of getting into the trade.

1496 Q. You mean, with the intention of forcing themselves into the Conference, is that the idea? A. I don't know whether they had that in mind or not; with the steel they expected to get general cargo.

Q. Then for some reason or other you found that you could not get general cargo, is that it? A. It would require more steamers, probably, than we had available to carry all of the steel, and it would require them to get practically all the general cargo which the Conference had been carrying, in order to load those steamers economically.

Q. Why couldn't they get it? A. Why couldn't they get it? 1497

Q. Yes? A. I don't know.

Q. It was expected, was it not, when the Manchurian Line was formed, that these steamers would continuously, for a period of time, during the life of the contract for the building of the railroad out there in Manchuria, that your line would have continued cargoes of steel? A. Yes, sir.

Q. And that the arrangement with the Manchurian Line was based upon that theory, wasn't it?

MR. KIRLIN: I object to the witness being interrogated about the purposes of the principals. 1498

THE WITNESS: I didn't know what the ideas of the principals were.

Q. The Steel Company did supply you right along, did they not, with cargoes for such ships as you had on the berth for them? A. Steel?

Q. Yes? A. Yes, sir.

Q. And then, did they have shipments of steel in excess of your capacity? A. Yes, sir.

Q. And did your people go to the Conference Lines to make an arrangement, or did the Conference Lines come to you? A. That I don't know. 1499

Q. What was done with reference to your taking charge, or taking the excess of steel shipments that were offered, before you went into the Conference? A. I don't know that there was any excess before we went into the Conference.

Q. I thought just now you said there was? A. I said they offered all the steel we required, I understood; possibly I didn't understand that question correctly; if you will read it again—

Q. If you had for every boat that you offered, that you had on the berth, a sufficient amount of steel to load it to the mark, that was satisfactory to you until you found out that the cost of doing that business was not altogether satisfactory to you, isn't that right? A. Before we went into the Conference we had the cars and the locomotives to go with the steel. 1500

Q. Yes? A. And when you speak of loading to the marks, I mean cars, locomotives and steel.

Q. Yes? A. Not steel only.

1501 Q. I will include that, too. A. Now, we had that for some time after we went into the Conference.

Q. And then before that period of time after you went into the Conference, you did not take any general cargo? A. Yes, took small lots of general cargo. We didn't have an awful lot of room for the general cargo.

Q. You had a very small amount, didn't you, if you had the locomotives and the other large, heavy products? A. Yes, we carried some general cargo.

Q. When was it that the heavy cargo, or the heavy freight like locomotives, ceased to be shipped?

1502

MR. KIRLIN: Those are not heavy.

Q. I mean, they are bulky, too.

MR. KIRLIN: Bulky.

Q. And heavy, too? A. About, during 1908.

Q. And since 1908 what has been the class of steel that you carried for the Export Company?

MR. KIRLIN: You mean during the life of the contract?

1503 Q. Yes, during the life of the contract? A. All kinds of steel products.

Q. With reference to these derricks that were sent out, do you know how many there were? A. Two, I believe.

Q. They went on the first ship, didn't they? A. The first ship, yes, sir; the first or second ship.

Q. And did the Steel Company install them? A. Yes, sir.

Q. So far as you know, that is the only addition to the wharfing facilities that the Steel Company made there? A. Yes, sir.

1504 Q. At Dalny. And so far as you know, all the requisite other facilities were there, so far as you know? A. Yes, sir.

Q. Are you serving Dalny now? A. Whenever occasion requires, yes, sir.

Q. And these other ports that you mentioned? A. Yes, sir.

Q. When did the Steel Company complete its contract with the Manchurian Railroad, so they ceased to send their products to fulfill that contract? A. During 1908.

Q. These by-ports that you spoke of, did the Steel Com-

pany have shipments for those ports? A. Continually, yes, 1505
sir.

Q. Do they have now? A. Yes, sir.

Q. They didn't supply any other facilities for those ports, did they, wharfing facilities? A. At most of those ports the cargo is discharged into lighters.

Q. That was true before you had anything to do with the Steel Products Company, was it not? A. Yes, sir.

Q. And it has remained so since? A. Yes, sir.

Q. The steel products that are carried by Conference Lines are in pursuance of the contract of the Manchurian Line with the Steel Products Company, isn't it? A. The 1506
Manchurian Line haven't any contract now with the United States Steel Products Company; in fact, it has been against the policy of that company, from our experience, to make exclusive contracts with anybody.

Q. During the time that the Manchurian Line had the contract with the Steel Products Company, were the Conference Lines carrying any of the steel? A. I do not know.

Q. Now, Mr. Lilly, after you went into the Conference, part of the steel shipments for the Steel Products Company would go on the Conference Lines, would it not, and part on the Manchurian Line? A. Yes, sir. 1507

Q. And the Conference Lines would carry the steel then at the rate which the Manchurian Line had fixed or agreed upon with the Steel Products Company, is that right? A. Yes, sir.

MR. BURLINGHAM: Mr. Goodwin was asked to produce some things at page 527, about Mitsui, etc. He has got them here. Mr. Goodwin produces, in response to the request of the Government, page 527 of the record, copies of letters that passed between Messrs. Barber & Company and Mitsui & Company, 1508
dated June 24th and 26th, 1913. Mr. Goodwin is right here, if you want him. It is a contract in the form of letters.

The letters were marked Petitioner's Exhibits 32 and 32-A for Identification.

MR. BURLINGHAM: He also produces copies of letters from Houlder & Partners, Inc., and Houlder, Weir & Boyd, Inc., dated respectively July 12, 1910,

1509 July 25, 1911, and August 6, 1912, together with a memorandum of contract made between Howard Houlder & Partners, Inc., as agents, and Messrs. Marsily & Company, dated July 13, 1909.

MR. MONTGOMERY: I ask to have all of this correspondence just mentioned marked as one exhibit for identification.

Letters marked Petitioner's Exhibit 33 for Identification.

MR. BURLINGHAM: Mr. Goodwin also produces the current contract between Messrs. Barber & Company,
1510 Inc., and the Vacuum Oil Company, in regard to lubricating oil and so forth.

Marked Petitioner's Exhibit 34 for Identification.

Adjourned.

New York, January 29, 1914.

Met pursuant to agreement.

Present—GILBERT H. MONTAGUE, Special Examiner.

1511 APPEARANCES:

ERNEST E. BALDWIN and STANLEY D. MONTGOMERY, for Petitioner.

MR. BALDWIN: Under the arangement between counsel this hearing was set for this morning at 10:30 o'clock, to complete the cross examination of the witnesses Sparks and Barber. The Government's counsel are present, ready to proceed. Default in the appearance of all the defendants and their counsel. The Gov-
1512 ernment requests that the Examiner set the hearing down for Monday at 10:30 o'clock, and that the hearing shall go on from day to day until completed.

THE EXAMINER: I will grant your request.

Adjourned to Monday, February 2, 1914, at 10:30 o'clock A. M.

New York, February 2, 1914. 1513

Met pursuant to adjournment.

Present—GILBERT H. MONTAGUE, Special Examiner.

APPEARANCES:

(Same as before.)

THOMAS ASHLEY SPARKS, resumed the stand.

Direct Examination continued by Mr. Montgomery:

Q. Mr. Sparks, the Hamburg-American Line bought out the United Line's interests in the United States & China-Japan Steamship Line in about 1910, did it not? A. I have brought you the figures; I don't remember it now, what it was or when it was; it is all in the testimony. 1514

Q. Do you remember the amount that was paid by the Hamburg Line for the Union Line's interests in the United States & China-Japan Steamship Line? A. The price paid to the Union Line was 4,000 pounds cash; that was contributed between the Hamburg Line and the Indra Line.

Q. And that cash brought what? A. The Union Line's interests in the U. S. & C.-J. Line; that is all. 1515

Q. That is, no tangible property? A. I suppose you would call it good will, as much as anything else.

Q. No other assets at all? A. No.

Q. How much freight did your line collect on an average, roughly, in a year, on business? A. What is the question, please?

Q. How much freight money does your line on an average get on its business a year, on its business to the Far East, here in New York? A. I could give you the figures.

Q. I mean, roughly, Mr. Sparks? A. I can make a guess at it. 1516

Q. What is it, please? A. Speaking very roughly, I should say about 135,000 pounds a year, on the outward ships, and about the same amount on the inward ships.

Q. That is, that you collect the inward freight in New York also? A. A large part of it, yes.

Q. That amount you spoke of, would be the amount collected in New York? A. Yes.

1517 Q. On the outward freight? A. Yes; that is very rough, of course.

MR. BURLINGHAM: I would like to make the following corrections in the record:

Page 414, fifth line from the bottom, should be "These lines have," instead of "This line has."

On page 446, fourth line from the bottom, instead of "taken" should be "turns."

On page 447, third and fourth lines, instead of "only the best," substitute "that less."

1518 On page 447, eighth line from the bottom for "date later," substitute "dead letter."

On page 467, fifth line from the bottom, change "principal" to "principal's."

On page 468, fourteenth line, first word, instead of "that," substitute "we."

Page 479, line three, last word should be "rate," instead of "made."

On page 484, third line, last word, instead of "had," "have."

1519 On page 503, eighth line, instead of "little," substitute "lot."

CROSS EXAMINATION by Mr. Burlingham:

Q. Mr. Sparks, what has your experience in the steamship business been? A. I first entered the office of a ship owner and ship broker in London; Galbraith, Pembroke & Company, in the year 1893, and stayed there until 1897, when I came to New York and joined the firm of Shewan, Tomes & Company.

1520 Q. Did you remain with Shewan, Tomes & Company until you joined the firm of Funch, Edye & Company? A. Yes, in 1907.

Q. You were not a member of the firm of Shewan, Tomes & Company, were you? A. No.

Q. At that time, in 1897, were they engaged in the China-Japan trade with the United States? A. They were running steamers from the East only.

Q. Their own chartered steamers? A. Chartered steamers; they were running steamers home at that time, and continued to do so until 1902, when the American Asiatic Com-

pany was formed, and took over the homeward business of 1521
Shewan, Tomes & Company, and started operations both ways. I was secretary and treasurer of the company in charge of its operations, and continued to direct them until 1907, when I left Shewan, Tomes & Company to join Funch, Edye & Company as a partner.

Q. The American Asiatic Company owned no steamers, but operated a line from here to the East? A. Yes, chartered ships.

Q. And since you have been a member of the firm of Funch, Edye & Company, has a part of that work been in connection with the United States & China-Japan Line? A. Yes; 1522
I have undertaken the superintendence of that line ever since I joined the firm.

Q. You have been familiar, then, since 1897, with the conditions of the trade between the United States and China-Japan? A. Yes.

Q. When was the first conference formed that you have had anything to do with? A. Either in 1904 or 1905; I really forget which.

Q. Have you any familiarity with conferences in other trade? A. Some.

1523

Q. In long voyage trade, have you? A. Yes.

Q. The shipping business is of course largely carried on now through conferences, is it not? A. Yes, very largely; both from Europe and from this side.

Q. And has been for a great many years, has it not? A. I believe so.

Q. What in your opinion are the advantages of conferences?

MR. BALDWIN: I object to that question on the ground it is incompetent, irrelevant and immaterial. The Sherman Act is its own economic standard; and 1524
what the advantages may be or may not be from the standpoint of the witness, is entirely immaterial. Furthermore, this witness has not shown himself qualified to testify as to the advantages or disadvantages of the conferences from the fact that he has been employed in the capacity he testified to.

Q. Answer the question, please? A. The principal advantages of the conference system are the maintenance of

1525 frequent and regular sailings; stable rates at about the basis of European rates; better ships; lower rates of insurance; and a certain orderliness of procedure, without which the full development of export business is impossible.

MR. BALDWIN: I wish to make another objection; the questions along this line are not pertinent to any question asked by the Government on direct-examination, and counsel must make this witness his own witness if he expects to proceed any further, and I shall make that contention.

1526 Q. In your last answer, have you had in mind shippers and merchants, or the lines themselves? A. It is equally to the advantage of them both; but as far as the ship owner is concerned, it is of special value to the small ship owner. It enables him to stay in the trade where otherwise he might be crowded out.

Q. Explain that a little more in detail, please.

MR. BALDWIN: It is understood that this procedure is under my objection.

1527 MR. BURLINGHAM: Certainly.

A. The difficulty that the small ship owner has to contend with in trying to run as a part of the regular service, is that his ship comes around for a turn on the berth, at irregular and very long intervals. If he should happen to have bad luck in striking a time when poor paying freight only was offered, or too much dense weight, or too much light weight, he might get very indifferent earnings.

MR. BALDWIN: You are speaking now of the carrier, are you?

1528 THE WITNESS: Yes; I am talking about the carrier or small ship owner; with the result that he might get discouraged, and sever his connection with the trade.

Q. You spoke of the small ship owner having bad luck; what did you refer to there? A. The conditions of the steamship trade are so irregular, that it is impossible for an average to be struck, unless a man is sufficiently large to dispatch say every week, or every two weeks, to cover the whole year. It might be that business requires two steamers load-

ing, one in the month of February, and one in the month of March; and there would be a great preponderance of dense weight in February and a great preponderance of light freight in March. The commodities offered in February might be steel rails, rosin, and galvanized sheets; and in March, principally tobacco and domestics and other like commodities. A steamer to be economically loaded, must have a certain proportion of dense weight and a certain proportion of light weight, in order that she may be full, and at the same time down to her marks. If there is no conference or pool, the ship owner in February would stay on the berth after he got as much dense weight as he wanted, until light freight developed, perhaps in the next month. The other dense weight that was offering in February, might have to wait over until March. If he is running in a conference or pool, there is no delay in the goods, there is no delay in the ship, and in the end, he gets a fair average of earnings over the whole period of twelve months. 1529 1530

Q. Is this particularly true of long voyage trades, this situation that you have described as a possible one? A. Yes, it is particularly true of the long voyage trades, and for these reasons: The Trans-Atlantic service by natural growth and elimination, has practically developed into one service for one port. 1531

Q. That is, you mean each line has its own particular ports? A. That is true.

Q. On the other side? A. Yes; these ports are to a large extent gateways to a competitive territory beyond. But the Trans-Atlantic lines are large organizations, with large capital and many steamers, and there is a large volume of freight moving to and through their ports, which enables them to load their ships and operate their business in a manner satisfactory to themselves and to shippers. Furthermore, the Trans-Atlantic steamer is primarily a passenger ship; the freight is a secondary consideration, and the result of this is that the Trans-Atlantic steamer is the most fully equipped and highly developed machine for ocean commerce that exists in the world. There are no services to compete with it from any carrier that competes with the United States for European trade. That has a very vital bearing on the situation. The long voyage trades, on the other hand, are in 1532

a much more elemental state of development; and because of this, and because many of them are of much more recent origin, it has been impossible to find persons willing to take a sufficiently large risk to operate a few steamers of and by themselves, to furnish a complete and satisfactory service. Take, for example, the China trade, where a round voyage occupies six months; it would need a very large fleet of steamers indeed for one ship-owning company or ship owner, to operate a frequent service. And the result has been that the business has been developed by a number of lines; and, as a further subdivision these lines have been made up of a number of separate ship owners, who have gone into the business in a partnership form, so as to take an interest in it without putting all their eggs in one basket. The great competitors of the United States in the long distance trades, are the countries of Europe, from which there is a more highly developed service, and there is a larger amount of trade, and more frequent dispatches. It is essential, therefore, that the small separate parts that go to make up the services in the long voyage trades from the United States, should co-operate and form one adequate service with a sufficient number of dispatches, instead of by operating as separate parts, none of which could give satisfactory service. To sum up, then, it comes to this: that where we are trading with Europe, we have the finest transportation facilities in the world, and no competitors have anything like it. When we are trading with far distant countries, we are competing with Europe, and they have better services, better ships than we have; and it behooves us to make the best of what we have got, and run a combined service that at least gives shippers and owners a chance in competition with their great European rivals.

1533 1534 1535

MR. BALDWIN: I wish to make a further objection that the witness has gone far beyond the intent of the question, in that part of his testimony that relates to what the necessities and policy may be with reference to these combined lines; that is not responsive to the question.

1536

Q. What is the length of time of the voyage from here to the East and return, on ordinary freight service? A. It is approximately about six months. Some of the boats do it a little less, but it is approximately six months.

Q. You have been speaking of the importance of the conference to the small ship owner; and, as I understand it, it would be impossible for him to maintain a regular service and to get an adequate return for his own few vessels, unless he were acting in co-operation with others; that is the substance of your testimony, is it not? A. That is my opinion, yes. 1537

Q. You spoke a few minutes ago of his having good or ill luck. That applies, I suppose, to seasonable conditions in the East, does it not? A. Yes; on the homeward business, the season does enter into it to some extent.

Q. Then, as I understand it, you regard the conference system as even more important in the long distance trade, the long voyage trade, than in the regular and established Trans-Atlantic trade; is that so? A. I consider it absolutely essential in the long voyage business. 1538

Q. And what of the contrary of these various lines that are constituent parts in the present conference, in this suit; how have they developed their business?

MR. BALDWIN: You mean since he has been personally acquainted with it?

Q. Yes, within your knowledge? A. They developed it under the conference system. 1539

Q. I remember your saying somewhere in the testimony that these lines were built up on the ashes of the ship brokers; did you not say so? A. That is quite true.

Q. Explain that a little more fully, please?

MR. BALDWIN: Of course all this is subject to my objection.

MR. BURLINGHAM: Certainly.

A. The first boat attempted to be loaded on the regular berths from here to China, were loaded by Edward Perry & Company; he was a loading broker, and he failed in business. Messrs. Barber & Company took the business up and loaded a few ships of their own, and then got some ship owners interested; among them my own firm, Funch, Edye & Company, who are shipping brokers. They succeeded in getting some owners; the Indra Line, the Hamburg Line, and the Indian Line, to take some interest in the business, after they had started it themselves, and had some heavy losses in 1540

1541 it I believe; and on the American Asiatic business, Houlders boats have been engaged, and Shewan, Tomes & Company in one case; and Howard Holmes & Company in the other, started some boats.

Q. You were speaking of the conference especially with reference to the ship owners; will you tell us what in your opinion are the advantages, if any, to the merchants in this country of a conference system?

MR. BALDWIN: I make the same objection that I made before, as to the competency and relevancy of
1542 this testimony; and the further objection that this witness is in no position to give the consensus of thought of the advantages of combination; if there is such a consensus, it ought to come from those who are embraced within the class of merchants dealing in foreign commerce.

Q. I assume that Shewan-Tomes are merchants, are they not? A. They are.

Q. And I suppose you have been a merchant a good part of your life? A. I had considerable experience between the
1543 years 1897 and 1907.

Q. Please answer the question? A. I think I mentioned the advantages of frequent and regular sailings and stable rates; there is one other very important advantage, and that is their ability to make joint contracts with the lines so that they can rely upon their contract dates of sailing, which they have had to agree with their purchasers in the East. I will explain that a little further; in Shanghai, where there is a very large market for cotton piece goods, the Chinaman buys so many thousand bales, with a shipment of so many hundred every two weeks, or every four weeks, as the case
1544 may be. If the shipper was unable to make a joint contract, and his contract called for shipments for a long distance ahead, they would not know with whom to make a particular contract, and he would have to go short of freight room himself, or else decline to assume the risk of guaranteeing the shipment nine months or twelve months ahead. Under the conference system, he can make his contract with any one line, with the definite assurance that that one or another of the conference members will be in a position to move each one of the parcels for which he has contracted.

By Mr. Montgomery. 1545

Q. That is to say, at the time he wants it moved? A. Yes, sir.

Q. These contracts that you call joint contracts are interchangeable contracts, and of course they would be impossible without a conference? A. Quite impossible.

Q. You gave this Shanghai merchant's case as merely an illustration, of course? A. Yes; it is entirely an illustration.

Q. Many of these contracts that have been put in evidence in the past hearings, are of this same sort, are they not? A. 1546
Yes.

MR. BALDWIN: I think they speak for themselves; I object to his characterizing them.

Q. Answer the question. A. I do not really recall which contracts were put in, Mr. Burlingham; but it is generally true.

Q. You spoke several times of the competition with Europe, will you explain with particular reference to the advantages, if there are any, to the American merchant in competition with European merchants? A. A great deal of the 1547
business is sold on a cost freight and insurance basis.

MR. BALDWIN: For the sake of the record, that may be perfectly plain to you, but I think you had better explain that.

Q. What is that, please? A. On a cost, freight, and insurance basis; that is to say, the merchant here makes a laid down price at destination, including the cost of the goods; the freight charges, and the insurance premiums.

By Mr. Baldwin: 1548

Q. You mean that is all involved in the purchase price? A. In the sale price. He makes a price at destination, I said; in this way, the question of shipment enters very largely into his ability to compete with Europe, and it is essential that he should be able to guarantee the shipment ahead, the same as the European seller can; and also that he shall have at least a fairly frequent number of dispatches to rely on.

1549 Q. How has this system worked, this system of joint contracts? A. It has worked to the entire satisfaction of the shippers and the ship.

MR. BALDWIN: I object to that as a mere generalization based upon no data. As to whether or not there were complaints or otherwise, or satisfaction to the shipper, that ought to be shown by some other evidence than the mere opinion of the witness; it is not at all material.

MR. SPOONER: His opinion is accompanied by a good
1550 deal of experience.

MR. BALDWIN: In any event, we would be entitled to investigate and cross examine as to each one of the particular items of content that this witness testifies to.

Q. In this China Japan trade, at one time there was, I believe, a rebate system on outward business of this country; is that correct? A. That is so.

Q. And that has been discontinued, has it? A. It has.

Q. But the rebate system, as I understand it, continues
1551 from foreign countries to this country to a degree, does it not? A. So I understand.

Q. What familiarity have you had with that system of rebates, both outward and homeward?

MR. BALDWIN: Of course, all this is subject to my general objection.

MR. BURLINGHAM: Yes.

A. I have had this much experience with it: that it was in existence for several years from this end, and I knew more or less about it from the other end, when I was operating the
1552 American Asiatic Company.

Q. What is the system, exactly? A. It is a return of a fixed and announced percentage of the freight paid to the steamship lines for exclusive support. That is to say, it is a fixed, or perhaps it would be better described as a discount such as all merchants are apt to use in their business; and inasmuch as it is a published discount and available to everybody, it really could not be characterized by the name of rebate, which has got into some disrepute on account of its use in connection with our railroads in this country. As a mat-

ter of fact, my personal opinion is that it is an exceedingly 1553
inadequate and expensive form of protection, for this reason: that after making voluntary return to shippers out of the freight they have paid you, with the understanding that they are to give you exclusive support,—

Q. (Interrupting) What do you mean by that, "exclusive support"? To ship by your lines or by the Conference lines, I suppose? A. Yes; ship by the Conference lines; to ship all their business by the Conference lines. After paying that out for years, the minute a competitor appears, rates become so demoralized that you are willing to give the shipper his deferred bonus and reduce his contract, and give him low 1554
rates; and your protection is not worth a bag of shells.

Q. This system that you have been describing is the deferred rebate system referred to in the petition? A. Yes.

Q. Define it? A. The circular that was sent out to shippers promise to them a return of 10 per cent. on the freights they have paid in, to be paid I think at the end of the year; provided that during that period they had confined their support entirely to the Conference lines.

Q. In your previous answers you have referred to pools; in speaking of the advantages of the Conference, I observe that once or twice you said "conferences and pools." Do you 1555
regard a pool as an essential part of the conference system? A. Yes, I consider it most essential.

Q. There are conferences without pools, of course, are there not? A. I think there are, yes.

Q. Do you still say that they are essential to conferences? A. They are a very essential part of the whole system. There are several specific reasons why I think so.

Q. I call your attention to the fact that conferences exist in certain trades without pools; that is a fact, is it not? A. Yes, it is. 1556

Q. Then can it be said that a pool is essential to a conference? A. I think that those conferences that are run without pools, will eventually break up.

Q. Why do you think that a pool is an important if not an essential feature in the conference system? A. It has two sides; it is essential for the shipper, and essential for the ship. In the first place, it has not always been possible to maintain a stable tariff of freight unless there is a pool. They begin to cut here and cut there, and the shippers find

1557 out that they are not absolutely safe, and there is always someone trying to undermine them. Another thing is, that the question of serving outports becomes a very serious matter if there is no pool.

Q. What do you mean by outports? A. Ports not regularly visited by the berth steamers; with a small parcel of freight, which really will not pay the steamer to make the deviation for. If there is no pool, it is nobody's business to carry it, and nobody will carry it; and the shipper has to seek some indirect transshipment method of reaching its destination.

1558 Q. Have you seen in your own experience the effects of the pooling system in the development of trade of the outports? A. Yes; in the China trade, for example, we as agents have no hesitation in scheduling one of our sailings, without really consulting an owner, whether it will pay him to go there; we take care of it there, because that is what they wish; if the freight does not pay; it is all made up by the pool at the end of the year.

Q. Could you send a ship to such outports for small lots, if you had no pooling system? A. If there was no pool, I am

1559 quite sure the individual owners would not deviate their ships for small quantities, unless the amount of freight paid them to do so.

Q. What other reasons are there in your opinion which make a pool advantageous? A. The operation of a pool contributes very largely to the orderly manner in which trade is conducted. And this in turn gives the ship owner a chance to occupy his berth and operate it more scientifically. It to a certain extent levels the services of the natural risks of the ocean transportation freight service, so that he finds himself with a business which is more or less steady; and he can

1560 make his plans accordingly. He can go ahead with more confidence in building better steamers and faster steamers, and steamers especially adapted to the trade, which he would be unable to do if he had to contend with all the wide fluctuations and risks that confront the tramp.

Q. Take a small ship owner, Mr. Sparks: what is the importance of a pool to him, compared with the large fellow? A. A large ship owner who could operate and run a regular line at stated intervals, so that he would automatically obtain a variety of the benefits and disadvantages of the trade over

the year, is not so greatly in need of the pooling system; but in the China trade, there are some exceedingly small factors; one or more of them get one or two sailings a year; if they should happen to strike an unfortunate loading two or three years running, the chances are that they would get discouraged with the trade, and give it up altogether. This would tend to put all the business into a few strong hands, and it would result in the survival of the fittest; or even in a general form of monopoly. 1561

Q. In your opinion, does a pool limit or restrain trade? A. Not at all; on the contrary, I think it develops it.

Q. Perhaps you can explain your answer by a fuller statement? A. In my opinion, all of the advantages which I have been recounting, both to the shipper and to the ship, cannot help but make better conditions in the trade. 1562

Q. You have spoken of the advantages of the pools, with regard to outports and the trade generally. I would like to have you tell us your opinion with regard to pools as affecting shipping, for instance, when there are large consignments of cargo, that are perhaps too large for one ship? A. That is a very important question, too.

MR. BALDWIN: In addition to my general objection, I am urging the objection further that he is not qualified to speak for the shipper at all. 1563

Q. Answer the question? A. If a service is being run by a lot of parts which do not co-ordinate, there is no provision made for certain and unexpected accumulations of cargo. These are apt to happen in berth, and do happen; and they usually happen at a time when trade is very active, and the price of tramp steamers is very low. The result is, that for a berth line to take them in chartered ships, entails heavy loss. If there is a pool, there is no difficulty at all in getting a pool as a rule to charter an extra steamer, or extra steamers; and by dividing the loss amongst the others, the consequences are not serious. But if it was everybody's business, it would be nobody's business, and there would be a congestion of freight, and a hampering of the movement of trade. 1564

Q. How about the effect on shippers of what I may call undesirable cargo; that is, undesirable from the viewpoint of freight for the ships? A. When we have a conference, the boat that is on the berth takes everything.

1565 Q. You are speaking now particularly with reference to pools? A. Pools particularly; I should have said pools and not conferences; when we have a pool, the boat on the berth takes everything that offers, irrespective of whether it is high class or low class freight; looking only to get a proportionate division of dense and light freight.

Q. For the trim of the ship, you mean? A. Yes. When everybody is for himself, there is a good deal of picking and choosing, with the result that undesirable freight gets left around, and there is a further delay in the movement of trade.

1566 Q. And this statement of yours is based on experience? A. Yes, sir, certainly; in a number of cases.

Q. As I understand it, you were running a line before the Conference came into being, from 1902 to 1905, were you not? A. Yes.

Q. And at that time you were a merchant as well as a shipping agent? A. I was.

Q. You spoke of the survival of the fittest, and the tendency toward monopoly; what do you think of the effect of a conference on monopoly, whether it tends towards it or away

1567 from it? A. Inasmuch as it tends to keep the smaller component parts of a service in business, I think it tends away from it; and I do not think that it is possible to have a monopoly on the ocean.

Q. How about this particular trade, the China-Japan trade; do you think there is any possibility of establishing a monopoly there? A. It is absolutely impossible.

Q. Why? A. For this reason: that suppose by process of elimination, there is only one line left in the business; that line would not have a monopoly. There are numerous indirect routes by which cargo can be and is shipped; there is the

1568 constant competition of the tramp. And at any time, a large merchant or a combination of merchants can put on a line against you. Even if there is this so-called monopoly existing, of only one line, it would be absolutely impossible to take any advantage of it, because this indirect competition would spring up, and you would find yourself losing freight by all sorts of routes that you have never thought of.

Q. If a conference were broken up in the way you have indicated, what would be the effect in your opinion on rates and conditions for shippers? A. Judging by my experience

in the past, it would not take very long before a rate war would be in progress; and that would mean that some shippers get one rate, and some shippers another rate; and they would all be jockeying for position, and their business would become disorganized; and as the earnings of the boat fell, fewer boats would be put on the berth, and the small man would be squeezed out. That was so in former times, when we had a freight war. 1569

Q. Before the Conference, what do you say as to the regularity of the sailings? A. I think we all of us made our boats do as much as they would. We made the February boats slop over into March, and do for our March contracts. 1570

Q. During that period, before the Conference of 1904 and 1905, when you were with the American Asiatic Company, did you load many ships?

MR. BALDWIN: Of course, this is all under my objection?

MR. BURLINGHAM: Yes, certainly.

Q. And if so, did you load them regularly? A. My recollection is that we confined ourselves to loading as many as would keep us prominently in the trade, but as few as we possibly could, because of the losses. 1571

Q. There were heavy losses, were there? A. Yes, very heavy losses.

MR. BALDWIN: I move to strike out about the heavy losses, on the ground there is no evidence here at all of what occasioned the losses, or the elements that entered into them; and in addition, it is incompetent, irrelevant and immaterial, as my original objection states.

Q. What did occasion the losses? 1572

MR. BALDWIN: I object to that question; he cannot state that, unless he is familiar with all of the items, and all of the losses that are involved.

MR. SPOONER: That is a matter of cross examination.

A. The low rate at which cargo was taken.

1573 CROSS EXAMINATION by Mr. Kirlin:

Q. Is the matter of operation of long voyage services under conference arrangements such as exists in this trade, a new thing, or is it a growth?

MR. BALDWIN: The same objection that I made before.

A. My general information is that it is an old matter in Europe, and it is getting to be a comparatively old matter here; but in each case, it was the outcome of a fight, and a
1574 settlement of the trade.

Q. Is it founded on experience of operation, or is it an arbitrary scheme devised to operate on certain fixed principles?

MR. BALDWIN: I object to that unless he has first hand information of the reasons and the causes that brought about conferences in the beginning, and has been familiar with each step of the growth of his own knowledge and not by hearsay.

Q. I am speaking now with special reference to the China trade.

1575

MR. MONTGOMERY: Do I understand your question to mean whether it was a gradual development, or whether it was all done at one single step?

MR. KIRLIN: Yes.

Q. The question was, is it founded on experience of operation, or is it an arbitrary scheme devised to operate on certain fixed principles?

MR. BALDWIN: I make the further objection that he is not qualified to answer the question.

1576 A. In the China trade, we had reached a period of exhaustion, and a discussion of how the business should be carried on led those owners who had had experience with conferences in Europe, to suggest this plan for the New York trade.

Q. It is founded, then, upon previous experience in other similar trades? A. Undoubtedly.

By Mr. Montgomery.

Q. The plan as a whole was suggested, you mean? A. Yes.

Q. Are all these services that you are in competition with, in the China trade, conference services? A. You mean direct services? 1577

Q. Yes, services from Europe.

MR. BALDWIN: That is all subject to my objection?

MR. KIRLIN: Yes, it is.

A. I think there are some outsiders, but I think largely it is controlled by conference principles from Europe.

Q. Are there any circumstances or conditions in long voyage services which in your opinion make it more desirable or more necessary that operations should be under conference, than of the short voyage service to Europe? A. Yes, Mr. Kirlin; I testified rather fully to that at the beginning of my testimony this morning. The long voyage service has grown gradually from small beginnings, and a number of people have taken an interest in the trade. It was impossible to find an owner that would assume to do the whole of the business; and the result is that there were a number of lines, and these lines were further subdivided into a number of separate ship owners, who took a small interest in partnership form, rather than leave the trade alone altogether; because they wanted to have an interest in it, and did not want to put all their money into one trade. 1578 1579

Q. Does the length of the voyage, the expense of operating it, and the time affect the ability of the small ship owner to continue in the trade of that sort, under circumstances of unrestricted competition? A. Yes; he would be very much handicapped. His boat could only make two, or perhaps not quite two voyages a year; and in order to get anything like average earnings out of the trade, he would have to have 25 or 30 steamers.

Q. So that the operation of the service without any such regulation or control as the conference gives, would be one of great risk if not impossibility to the small owner, in your opinion, I gather? A. Yes; I think it would not be desirable business for him at all. 1580

Q. If the small ship owner could be eliminated by a period of unrestricted competition, or should eliminate himself, rather than incur the risks of it, and the trade consequently fell into the hands of the fittest who might survive, would that change in the operation of the business have any effect

1581 on the small shipper as distinguished from the large shipper? A. Of course, it would depend entirely on how the surviving line used its position. I think that in all cases, it is better that business should be controlled by a number of men acting in co-operation, than by one man.

Q. If sailings should be curtailed by the elimination of the smaller members of the conference, and rates should be demoralized, would the large shippers be in position through leasing line or otherwise, to move their stuff, either singly or through the co-operation of several large owners of charter vessels? A. Yes, they would undoubtedly be in that
1582 position, and the small shipper would be at a great disadvantage.

Q. So that on the one hand, unrestricted competition might result in the carrying business falling into the hands of the stronger, while the selling business, so far as the shipping size of it is concerned, would also be likely to fall into the hands of the stronger merchant? A. That is undoubtedly true.

Q. And the elimination of the pool as an element of the conference I think you have already said, would result in
1583 the elimination of the smaller ports, the minor ports; I mean, the ports whose business would not be profitable for a single owner to serve? A. That is so.

Q. I mean, the regular schedule of ports served by any service from here eastward? A. That is so.

Q. Many of those ports, as I have understood the testimony, have been developed to a certain extent through the direct service afforded them by conference? A. They are developing gradually. We used to take cargoes from those ports at infrequent intervals and now they come at more regular intervals.

1584 Q. Such of them as would not afford profitable trade, would fall back to their former positions under a period of unrestricted competition? A. Yes, I think they would.

Q. This has special reference to the outward business; and what would the result be homeward, in regard to the shipments from those ports; that is to say, the shippers of smaller ports, that could not afford remunerative cargo? A. I have no doubt the same principle would apply.

Q. It would apply both ways? A. Yes.

By Mr. Burlingham: 1585

Q. You were asked to produce at one of the previous hearings a number of contracts with the Standard Oil Company and others, were you not? A. I was asked to produce some contracts; I do not remember which they were now.

Q. Two of these contracts were marked for identification Petitioner's Exhibits 30 and 30-A, and they are signed by Funch, Edye & Company on the one hand, and Messrs. Barber & Company, Incorporated, and on the other, by the Government of the Philippine Islands, by Brigadier General Edwards. Those are the two contracts, which you produced? 1586
A. Yes, I think I produced these.

Q. And have you been carrying goods for the Government under those contracts on the terms and conditions provided therein? A. Surely.

MR. BURLINGHAM: I will offer these papers in evidence.

Received in evidence and marked Defendants' Exhibits 2 and 3.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Sparks, you are one of the party defendants in 1587
this suit? A. Yes, sir.

Q. In that you are one of the parties making up the firm of Funch, Edye & Company? A. Yes, sir.

Q. And they are the shipping agents here for which ones of these defendant lines? A. The United States & China-Japan Line.

Q. Composed of what lines? A. The Hamburg Line and the Indra Line of Liverpool.

Q. Is your firm also the agent for the Union Steamship Company? A. Yes, sir.

Q. Before it was purchased by the Hamburg-American 1588
Line? A. Yes, we are still the agents for the Union Company.

Q. But the ownership or control of that was taken over by purchase, as you have testified to, by the Hamburg-American? A. No, that is not so; they simply bought the Union Company's share in the U. S. & C.-J. Line.

Q. That is, its right to participate in that business? A. That is right.

Q. And since that time, the Union Line has not been operating in the same trade, has it? A. No.

1597 Q. From 1897 to 1904 or 1905, and while Shewan, Tomes & Co. were continuing this business of merchants as you have testified to, there was no conference; I mean, to the Asiatic ports? A. I don't know whether the two lines then engaged in it were in conference or not; I dare say they were, to some extent.

Q. If you have not any direct knowledge about it, I do not want you to guess about it; were they or were they not, to your own knowledge? A. I don't know.

Q. In what way were Shewan, Tomes & Company engaged in that business as merchants; did they buy the goods here
1598 and sell the goods in the Far East; was that the idea? A. Yes.

Q. What lines were engaged in the carrying of the trade? A. Which years are you referring to now, Mr. Baldwin?

Q. Up until the conference began, in 1904? A. Edward Perry operated a spasmodic line; Barber & Company, and Funch, Edye & Company operated a more or less regular line up until 1902; in 1902 they formed the American Asiatic Company, and it commenced operations; and immediately thereafter, the American Oriental Line was formed and com-
1599 menced operations.

Q. Did they immediately go into conference, these two lines that were formed, with the other lines? A. No; they went into very violent and cut-throat competition.

Q. Did the firm of Shewan, Tomes & Company, as merchants between 1897 and 1904, sell directly to customers, or did they simply ship from here to their own house? A. They shipped on orders received by mail or cable from their own house; some of the goods were for themselves, and some were for the Chinese customers.

Q. Would you be informed in advance of the shipment,
1600 whether the goods were meant for customers or for themselves? A. No; not always, but we could tell pretty well by the commodity.

Q. You had not spent any time out there yourself, had you? A. No, sir.

Q. So that the knowledge that you had as to whether they were intended for the customers or for your own house, was derived just from the course of the business? A. Yes.

Q. You had no first hand knowledge about it, did you? A. For instance, they controlled a cement factory; if they

ordered cement machinery, I could take it for granted it was for themselves, or for their cement factory. 1601

Q. What else did your China house handle, to which you shipped; what other commodities? A. They had everything; wire nails, shovels and piece goods.

Q. As a matter of fact is it not true that they had a very large general store out there, and when they wanted to supply or replenish their stock, they would simply either cable or inform you by a letter that they wanted certain commodities, and you bought them and shipped them on; was not that about the way it happened? A. That is not my understanding of the way they did business at all. 1602

Q. You do not think they did business that way? A. No.

Q. Did you read the testimony of Mr. Dodwell in this case? A. No.

Q. How long did this rate war last? A. It lasted from whenever that started, in October, I think it was, of 1902, until the conference was formed.

Q. That was about two and one-half years, was it not? A. Thereabouts.

Q. Were the sailings of the competing lines decreased during that time, of your own knowledge? A. I know that we loaded as few as possible, and so did Messrs. Barber. 1603

Q. Your purpose, however, was to take care of the trade, was it not? A. Yes.

Q. And while you loaded as few as possible, you also had to take care of the demands of the trade; you were just as anxious to do that as your competitor was, were you not? A. No; we were all of us anxious to load as many boats as would preserve our right to a place in that trade; and that is about all.

Q. And what particular lines were involved in this alleged rate war? A. The United & China-Japan Line, the Barber Line, the American Oriental Line, the American Asiatic Steamship Company; you are talking now about the outward business, are you not? 1604

Q. Oh, yes; when they finally entered into the conference, and agreed upon the number of sailings, did they take into consideration the status of the trade, the demands of tonnage, in arranging for the sailings? A. Yes.

Q. Is that right? A. Yes; there was a very lengthy dispute as to the number of sailings to which each interest was entitled.

1613 Q. Then did you go with Funch, Edye & Company? A. Yes.

Recess.

Afternoon Session.

THOMAS ASHLEY SPARKS, resumed the stand.

RE-DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Sparks, you testified this morning that after the
1614 conference was entered into, the rates were uniformly increased; do you remember what the ratio of increase was? A. No, I don't remember.

Q. Could you give us some general idea? A. They came up from a fighting basis; they were down to somewhere between 10 and 20 shillings; to somewhere between 30 and 40 shillings, I should say.

Q. How long would you say that this basis of about 20 shillings had been in force; I mean how long had that general rate maintained? A. It started in the minute we announced our first sailings.

1615 Q. That was about in 1902? A. Yes.

Q. Was that maintained pretty generally right up to the date of the conference? A. The rates got lower and lower; I think they even got down to something under 10 shillings.

Q. Do you know about the number of sailings that your particular line had, immediately prior to the making of this conference, in 1902? A. Do you mean of the American Asiatic Company?

Q. Yes, I mean of that company? A. I think we dispatched about 6; I am not clear on the number; it is 10 or 12
1616 years ago; it was about that.

Q. You think it was about 6? A. Yes; 5 or 6.

Q. So according to that, you had an increase of one sailing per year under the conference? A. I think they tried to make us satisfied with 6; we wanted 8, and we finally compromised with 7; that is my recollection.

Q. Do you know how many the United States & China-Japan Line had? A. No, I don't know.

Q. I mean, how many sailings? A. No.

Q. Or the other lines? A. I don't know.

Q. You never looked that up? A. No; I knew at the time, 1617
of course.

Q. Among the advantages that you testified to this morning growing out of the conference, among other things was the sailings; do you mean by that, the number of sailings and the regularity of sailings? A. Yes.

Q. You don't know, do you, of your own knowledge whether the combined sailings of the defendants before the conference was made, was any less than the combined sailings arrived at in the agreement? A. I think it was less; but I have not the figures.

Q. Very much less, or very little less? A. I don't remem- 1618
ber; I have not the figures at all; I can get them for you.

Q. The regularity of sailings, according to your idea, is of advantage not only to the owner or the carrier, but also to the shipper? A. Yes, sir.

Q. And your idea is that that can only be maintained by conference? A. Yes, I think so.

Q. You had a good many complaints as to the lack of regularity and the insufficiency of the sailings for quite a long time after the conference was formed, did you not? A. Not that I recall; we did not get down to fixed sailings for some 1619
time; to actual dates for some time.

Q. I will call your attention to the minutes of the conference under date of December 28th, 1909, under the title "Sailings," which reads, "The irregularity of the service having caused shippers to complain, a committee consisting of Messrs. Blake, Goodwin, Houtman, Sewell and West was appointed to report to the best means of improving the service; giving an increased number of sailings and as much regularity in the sailing dates as possible." After reading that conference report to you, is it not a fact, Mr. Sparks, that your sailings were not regular, and there was considerable com- 1620
plaint about it? A. Yes, that is evidently so.

Q. And that was as late as 1909, five years after the conference was entered into? A. That was no doubt at the time—

Q. (Interrupting) Get my question again; that was as late as 1909, that you were having those troubles; is that correct? A. According to those minutes, yes.

1621 Q. You do not doubt the veracity of them, do you? A. I have no means of doubting or approving them.

Q. Did you not attend this conference meeting? A. I don't know whether I was at that one or not.

MR. BALDWIN: Let me see the minute itself, and see who was present.

MR. MONTGOMERY: It does not give the members present; but there are the original minutes.

Q. I show you copy of minutes, which I understand, Mr. Sparks, you yourself furnished; and I ask you to look at the
1622 copy and see whether it refreshes your recollection as to whether you were there at the time this committee was appointed? A. There is nothing on there to show me whether I was there or not.

Q. Have you any recollection of your own, now, since I have read the minutes to you of that date, of the appointment of the committee? A. No, I have not.

Q. Have you any recollection of whether or not this committee subsequently made a report? A. No, I do not remember the formation of the committee.

1623 Q. Have you any recollection of whether or not at about that time there had been a number of complaints because of this irregularity that I am interrogating you about? A. No.

Q. That has passed out of your mind? A. Yes.

Q. Were you in the habit of attending these conference meetings pretty regularly? A. Yes, quite regularly.

Q. Do you remember anything about the committee's report at all; I don't remember anything about the committee.

MR. BALDWIN: I offer in evidence now the minutes of January 4, 1910, containing the report of the com-
1624 mittee appointed at the meeting of December 28, 1909.

MR. BURLINGHAM: I do not object on the ground that it is not the original copy, but I object on the ground it is incompetent, irrelevant and immaterial, and not within the scope of the issues raised by the pleadings.

Received in evidence and marked Petitioner's Exhibit 35, reading as follows:

"CONTRACTS, etc.

1625

A contract has been made with Messrs. Wright's Health Underwear Co., for all their shipments during the year, which will amount to from 4/600 tons for Hong Kong, and 6/800 tons for Shanghai. The rate is 22/6 net. It was agreed to quote a rate of 20/– with lift scale net, on one large buoy for shipment to Singapore.

The Committee appointed at the last meeting have submitted the following memorandum of suggestions for bettering the service:

1626

In accordance with the request expressed at the— Dec. 28th, '09, The Committee appointed submit the following suggestions, the object being to insure regular sailing dates, increase the number of sailings and in this way provide a better service for the trade:

A steamer shall sail on each itinerary on a fixed sailing date, such to be 20 days apart, steamer to sail on such date full or not full.

In order to help accomplish this result, the Committee suggests that each steamer carry a minimum of 40,000 c/s of Refined Petroleum. The shipments of 1627
this minimum of Petroleum to continue until freight conditions change sufficiently to warrant a reduction in the minimum or the entire elimination of petroleum. At present, owing to the large cement contract (75,000 bbls.), it is deemed that it will not be necessary to carry any Refined Petroleum on steamers taking the Philippine run for some time to come.

The Committee in recommending the carrying of case oil, as mentioned above, have taken into consideration the steel shipments which are now going forward, and have made their calculations based on an 1628
average of about 2,000 tons of steel per steamer.

If the foregoing recommendation is put in force it will mean 18 sailings per year on each run, or a total of 36 sailings.

The foregoing is concurred in by all the Committee with the exception of Mr. West, representing the American & Manchurian Line, whose counter propo-

1629 sition will probably also be submitted at the same time as this.

(s) A. L. HAUTMAN,
Representing Barber & Co., Inc.

(s) RBT. H. GOODWIN,
Representing Funch, Edye & Co.

(s) R. A. SEWELL,
Representing Howard Houlder & Partners Inc.

1630 (s) R. H. BLAKE,
Representing American-Asiatic S/S Line.

Messrs. Norton have decided not to submit a counter-proposal.

EARNINGS.

S/S *Dacre Castle,* sailed December 19th. Gross freight £9490 7/–."

Q. I notice, Mr. Sparks, in Petitioner's Exhibit 35 just introduced, that each itinerary shall have a fixed sailing date,
1631 such to be 20 days apart, steamer to sail on such date full or not full. Prior to that time, had there been fixed sailing dates? A. No, at least, I take it not; I don't remember the exact date, but I remember very well that I was a prime mover in getting those fixed dates put in.

Q. Then the fact that you were a prime mover in getting those fixed dates put in, means that in some way there has occurred to you at the present time some recollection about that report? A. I don't recollect whether it was formed for that purpose at all.

Q. Do you recollect that for some reason or other there
1632 was this change? A. I remember perfectly well we agreed on fixed dates.

Q. Do you remember prior to that date, then, that you did not have fixed dates? A. We had regular sailings, but not fixed dates.

Q. In other words, up to January 4th, 1910, nearly six years of the conference life, no such thing as fixed sailings had obtained? A. That is right.

Q. I notice that this report of the committee uses the words "fixed sailings." How would you define that? A. A fixed

sailing is a sailing that takes place on a regular date; it is advertised for a certain date, and sails on that date. 1633

Q. Is there any difference between a fixed sailing and a regular sailing? A. Yes, quite a wide difference.

Q. What is it? A. You might have a regular line once a month; as long as they give shippers the opportunity of shipping during a given month, that would constitute a regular sailing.

Q. Was this adoption of fixed sailings that is to say, on fixed dates, for the benefit of the shippers? A. Undoubtedly.

Q. Had it not been just as much for his benefit for the six years preceding, as it was at the time you adopted it? A. It is not possible to put all reforms under operation at once. 1634

Q. You had practically the same number of boats afterwards as you did before, did you not? A. According to this minute, we were to increase our service.

Q. According to these minutes, you were to have 36; and according to the conference you were to have 41 according to the agreement; so you dropped off five, did you not? A. No.

Q. Is it your understanding that although there were 41 sailings provided for by the conference agreement, you did not have that many? A. I told you those were simply the proportions allotted to the different people in the trade. 1635

Q. The proportions to which you were entitled of the 41 sailings; now I ask you whether or not these proportions were maintained? A. I don't remember; I think they varied in each year; sometimes they were more and sometimes they were less.

Q. According to this recommendation of the committee, the total number of fixed sailings would amount to 36; do you know whether or not the 36 sailings thus provided for was greater or less than it was the year before, in 1909? A. I have no figures.

Q. You have no figures on any of the years, then, have you, before that time? A. I have not with me, no. 1636

Q. What is your recollection about it, Mr. Sparks; whether they were less or more? A. I don't recollect; my impression is that 1909 was a bad year, with small dispatches in all trades.

Q. If that is true then, why was it that in 1909 there were complaints of shippers because of the fact that the service was not satisfactory, as evidenced by the minutes of De-

1637 cember 28th, 1909, which have been read into evidence? A. That furnishes its own reason.

Q. In other words, in 1909, that business was not satisfactory, and they were not getting sufficient sailings; is that what you mean? A. It is rather difficult to explain that; if there would be less sailings, that does not detract from the desire of the shippers to forward goods that they have sold; they would like to have the same number of sailings, whether there is much or little to go forward.

Q. Mr. Sparks, without repeating what I have asked, what I want to find out is this: it is perfectly apparent that for
1638 some time prior to the 28th day of December, 1909— A. 1909 or 1910?

Q. 1909, which was the date of this meeting, and the report of the committee was made January 4th, 1910, just a few days afterwards; it is perfectly apparent, is it not, that for some time preceding the date of December 28th, 1909, the shippers had been complaining because they had not had sufficient service, either in regularity or the numbers of those boats? A. That is quite right.

Q. So that whatever may have been in the minds of the
1639 ship owners at that time with reference to the business being satisfactory or not, the shippers must have had cargoes or parts of cargoes that they could not get off at the time they thought they ought to go? A. That is right.

Q. Do you remember how many sailings you averaged a month in 1908? A. No.

Q. Do you remember whether or not in 1908 there was an average of four sailings, provided for by the agreement? A. No, I don't remember.

Q. Do you know whether or not in 1908 there were two sailings, short of the agreement? A. No.

1640 Q. Have you any recollection about it in 1909? A. No, I have not got any of the figures before me, and without them I could not answer those questions.

Q. Among other things you testified as to an advantage to the shipper growing out of the conference, you mentioned better ships? A. Yes.

Q. Was there any particular change in the ships; their size, or their classification, after the conference was formed, from what they were before? A. Yes; the ships have constantly improved in size and speed.

Q. Were the same ships that were used by the competitors before the conference, used in the conference after it was made up? A. Some of them, yes. 1641

Q. Were they not most of them for some little time? A. I do not think they were changed immediately.

Q. When did this improvement in the character of the ships begin; how many years after the conference was started? A. I am afraid I am not competent to give evidence on that point.

Q. You have testified in answer to Mr. Burlingham's questions, that one of the benefits growing out of the conference is the fact that better ships were provided; I am now asking you when better ships were provided? A. It has been a constant improvement. 1642

Q. Is it not proved that there has been a constant improvement in the size and quality of the ships, and their relative speed, all over the world, and in all conferences? A. In all conferences, yes; I think so.

Q. And also tramp steamers; haven't they increased also? A. Increased in size, some of them; not in speed or quality.

Q. Has not the class of ships also increased, as to ships built and owned by lines, owners not engaged in conference? A. Trans-Atlantic business, you mean? 1643

Q. All business, yes? A. I don't know; that is too general; I cannot answer that.

Q. Haven't the boats used by the Steel Export Company also been of a better quality of boats than the boats before the date of this conference? A. I don't know what boats you refer to.

Q. The Steel Products Corporation have boats of their own, have they not? A. I think they have, but I am not familiar with them.

Q. Do you know anything about whether or not theirs have been improved? A. No; I don't know anything about that at all. 1644

Q. Do you know anything about the boats used in their line to Brazil? A. No; they are not their own boats; they are only chartered boats.

Q. Do you know anything at all about the boats that the Steel Company charters? A. They charter any boat that comes along, so far as I know.

Q. Do you know whether or not the boats that they charter

1645 in the Brazil trade, in the recent charters have been better than the boats they were able to get a number of years ago? A. I think they have got some American boats; that lends a patriotic value to them.

Q. I am not asking you about the patriotic value; I am asking you whether they are better or not? A. I am not familiar with them.

Q. You testified generally that most all of the ocean carrying trade is controlled by conferences? A. No; I only testified that regular berth trade was, to a large extent, controlled by conferences.

1646 Q. As differentiated from the tramp; is that what you mean? A. That is it.

Q. Are there not a number of lines engaged in regular service, that are not in conference? A. I have no doubt there are some, yes.

Q. Are there not some from Belgium and Germany, that are not in conference? A. I dare say there are some, yes.

Q. Do you know as a matter of fact that there are some that are engaged very largely in South American trade, from the continent, that are not in conference? A. Yes, there are a number of outside lines, I believe.

1647 Q. Regular lines? A. Yes, more or less regular.

Q. You say more or less regular; what do you mean by that; have you watched their operations to know whether they are regular or not regular? A. They are very largely made up of chartered steamers, I believe.

Q. You say you believe, where do you get that information? A. I was so informed by my principals at Hamburg when I was there this year.

Q. Is the American Asiatic Line made up of boats it owns or charters? A. They charter them.

1648 Q. They always have, have they not? A. Yes, they had rather a different arrangement, or they have a different arrangement now, I believe; but still it is a form of charter.

Q. They still have these chartered boats? A. Yes.

Q. Are not boats of these lines in this conference made up of chartered boats? A. No.

Q. What proportion of them are? A. You can practically say that all liners, because the boats chartered by the American Asiatic are owned by the members of the Conference, and are regular line boats.

Q. Boats that had been in other trade before this con- 1649
ference was formed? A. Mostly new boats; they have been built since this conference was formed.

Q. How many boats have been built since the conference was formed, that are now in that trade; new boats? A. I am not able to answer.

Q. Since this conference was formed, are there any regular lines from the Atlantic ports to the Far East? A. The American Manchurian Line started since the conference was formed.

Q. That was started for the purpose of providing the 1650
requisite tonnage for the United States Steel Corporation to carry out its contract to build the Manchurian Railroad, was it not? A. It was started in connection with that business; just who was interested in it, I do not know.

Q. Outside of that line starting, concerning which Mr. Lilly has testified in this case, what other regular lines since the conference has been formed that have operated in the Asiatic trade? A. I don't remember any others.

Q. Did you attend to the insurance matters for the Shewan, Tomes Co. before this conference was formed? A. Well, I think they formed part of my work, yes.

Q. You think so, you say? A. It is a great many years 1651
ago, Mr. Baldwin; my recollection is that they had an open policy in China, with the Yang-tse-Insurance Company; and we simply declared our risks under that open policy to the local agents here.

Q. Upon what information do you base your statement that you would get better insurance rates by reason of the conference? A. The last case that came to my notice was some cotton risk, that we placed on the steamer *Romera;* we got one rate on the *Muncaster Castle,* and could not get as low a rate on the *Romera,* because it was not a regular liner.

Q. Which was the larger boat of the two? A. They were 1652
about the same size.

Q. Which was the newer boat of the two? A. I don't know.

Q. The facilities for stowing cotton and taking care of it were just as good on one boat as on the other? A. I don't know anything about the relative value of the two boats.

Q. Do you know anything about the personnel of the

officers and crew whether it was superior in the case of the *Muncaster Castle,* over that of the *Romera?* A. The underwriters evidently thought it was superior.

Q. I am not asking you what the underwriters thought; I am asking you whether you knew of any superiority? A. I don't know anything about it.

Q. Then what was the reason advanced by the insurer, the insurance company; why the rate was given? A. Simply because it was a regular liner, and the other was not.

Q. Was there any reason for it? A. No.

Q. They did not state wherein the fact that it was a regular liner would make the risk any less than it would be for a boat that was not a regular liner? A. No; but the risk is preferable to them.

Q. What did he say about it; what were his words, as near as you can recollect? A. I don't remember.

Q. Did he say "Conference liner," or just "regular liner?" A. "Regular liner."

Q. He said "regular liner?" A. Yes; we have recently made contracts—

Q. Never mind that; do you know who the owner of the *Romera* was? A. McClay & McIntyre, of Glasgow.

Q. Do you know whether or not that same boat has been discriminated against in the matter of insurance at any other time, by any other underwriter? A. I don't know anything about it.

Q. Is that the fact then, that you relied upon to make your general statement that conference produces better insurance rates? A. No; there are several others.

Q. What are they? A. We have recently had to make contracts where we agreed to pay any extra insurance that was charged in case we put in a boat that was not a regular conference boat; clearly showing that the shipper is charged extra insurance.

Q. How was the shipper charged extra; how was it shown? A. Because we have to agree to indemnify him in case we put in a boat that was a chartered boat, and not a regular conference liner.

Q. Was there anything said as to whether it was due to the greater responsibility of the conference lines; was that the idea? A. I don't know what the idea was; it is evidently a risk that the insurance companies prefer.

Q. What insurance company was it that made that ar- 1657
rangement, or that proposition? A. I don't know which one it was; they would all be alike.

Q. How many other times has that happened, since this conference started? A. To the best of my knowledge and belief, it has always been so.

Q. I am asking you for the specific events, where insurance companies took the stand that because of the conference, for owning or controlling or chartering of a boat, they would give a less rate than they would to any other boat not in the conference; all alike, tonnage and capacity? A. I should be glad to get them up for you, but I think those are on every 1658
parcel that moves.

Q. I am not asking you what you think; I am trying to get down to your definite knowledge. Give me some case; you have now mentioned two, and I want whatever more you can give? A. The Indra Line started a service from San Francisco to Japan, in cotton; and we had considerable trouble in getting the insurance company to give the lowest rate of insurance for those boats, because they thought we had chartered boats, and not regular liners; and we finally had to demonstrate to them that they were regular liners in another trade; and they admitted our contention, and gave us 1659
the lowest rate.

Q. Then although the boats were just as good out of conference as they would be in conference, the insurance company discriminated against them because they were not regular liners; is that right? A. They were going to, but they did not.

Q. They purposed to? A. Yes.

Q. And was any suggestion made to your knowledge, as to why they would give a lesser rate because it was a regular liner? A. Because on the whole, the liners run better ships. 1660

Q. But these ships were just the same, were they not? A. No.

Q. What difference did it make to the insurer of a particular boat, or particular cargo in a particular boat, if the boat was the same, whether it was owned by the conference or not? A. It is not the question of the conference; it is a question of the regular line.

Q. You testified as to the advantage of a conference; there

1661 could be regular line without a conference, could there not? A. No.

Q. Referring to the Brazil trade, the Lloyd Brazileiro was a regular line, was it not? A. Yes.

Q. Does not the Steel Products Export Company maintain a regular line now to South American ports, particularly Brazil? A. They have a steamer about once a month, yes.

Q. It is a regular line, is it not? A. Yes.

Q. They are not in conference, are they, in the Brazil trade A. No.

1662 Q. Do you know whether or not their boats are discriminated against? A. They certainly would not be, with the American Hawaiian boats.

Q. I am asking whether you know, Mr. Sparks, whether they do not get the benefit of just as good an insurance rate as one of the conference boats, in the Brazilian conference? A. I should think they would on account of the boats they have chartered; they have chartered very good boats.

Q. Then if that is true, they would get a good rate because of the quality of the boats and not because of the fact that

1663 it is a regular line; is that true? A. Those boats are engaged in regular lines in their trade.

Q. They are not in conference, are they? A. No.

Q. There is an instance where there is a very favorable insurance rate, or just as good a rate as the conference line gets, although that line is not in conference? A. Yes, that is so.

Q. This line we are just speaking of, owned by the Steel Products Company, is not engaged in any other trade than the South American trade now, is it, and has not been for some time? A. I do not understand the question.

1664 Q. You said that that line owned by the Steel Products Export Company, was engaged in other trades; what other trades? A. I said that the boats had been liners in other trades, or were built for liners in other trades.

Q. Let me understand you, then; is it your theory that a favorable insurance rate obtains if a boat is in regular line, or has been in regular line; which? A. Both.

Q. Then what would be a favorable insurance rate would go to a regular line regardless of whether it is in conference or not? A. Yes.

Q. Mr. Sparks, you also testified this morning that it was of advantage to the shipper to have these joint contracts; you mean by that, contracts which made with one line, gives the shipper the opportunity in his option to ship on any one of the lines that happen to be on the berth; is that right? A. Yes. 1665

Q. Do you make these joint contracts with all shippers? A. With any one who wants a contract, yes.

Q. And you limit that, I suppose, entirely to those who confined all of their shipments to the conference lines, as you have testified this morning? A. I don't recollect testifying to anything of the sort. 1666

Q. Maybe I got that wrong; the rebates, where you grant rebates,—you would exact loyalty to the conference lines, is that right? A. That is right.

Q. Upon what condition do you make these joint contracts, by which the shipper is allowed to ship over any of the lines that happen to be on the berth? A. No condition whatever.

Q. Do you make the condition of a certain amount of cargo, to move at a certain time, or all of the cargo within a certain time? A. Any way that the shipper wants to make them; he may book 60 barrels, to move in the month of April; that is, by joint contract, and it will be carried by whatever steamer is on the berth in April. 1667

Q. And for that kind of a contract you do not require that they shall confine all their shipments to that line? A. No.

Q. It has been stated here by Mr. Montgomery that I am using the words "joint contract" perhaps inadvisedly; is it a contract or just an engagement; is it what you call booking ahead, without the formality of a written contract, or anything of that kind? A. It would come in on a broker's form of contract.

Q. Do you give any concession from the rate to those who make these joint contracts? A. In some cases 1668

Q. Well, does that mean practically all of the cases, or just a few? A. Oh, no; it would happen in some cases, and not in the others.

Q. What proportion, and under what circumstances would you grant the concessions? A. It might be that the shipper would make us a firm offer of a certain quantity of stuff, for some concession in the rate; and he might make a plea that he

1669 could not do business at more money than that, and we might say, "Very well; all right; we will take the contract."

Q. I want to know whether you simply make a joint contract with no provision that the shipper shall confine his shipments to the conference lines. You do not usually give a concession from the rates unless under very special circumstances, do you? A. No, not except under special circumstances.

Q. And that does not happen very often, does it? A. Yes, quite frequently.

Q. Would that depend upon the quantity? A. It might.

1670 Q. And it most always does, does it not? A. Not at all; it may only be 40 barrels. A man may want to ship stuff only worth two cents a pound; it would not stand more than a freight rate of such and such an amount; and we say, "Very well; let him try it, and work up some business."

Q. And in that instance, then, you let him make the rate? A. Practically, that is what it amounts to.

Q. Do you have what they call time contracts, too? A. Yes, we have some.

Q. And do you make concessions from the rate in such

1671 contracts? A. The practice varies very frequently; sometimes one concession is made for a long term contract; and a tariff rate is moved down to meet the same. Sometimes it is simply a concession from the tariff rate; it is difficult to generalize.

Q. You do not mean to say for instance, because some exporter like say Meiklejohn, or some other large exporter of cotton, comes to you to ask you to make a rate for him for a given or a certain amount of cotton; that if you give him a concession of the rate, you immediately move the rate down to meet the rate given to him? A. That has been done,

1672 yes.

Q. How often? A. I don't remember.

Q. Is there any time when you can recollect that it was done during the year 1912? A. I cannot remember any specific instance.

Q. As a matter of fact, it is rather infrequent, is it not, that such a thing would happen, that you would move the rate down to meet a concession made to an individual shipper? A. My recollection is that it is done rather frequently.

Q. Wherein exists this stability of rates you talked about

this morning, as one of the good features of the conference, 1673
if upon the offering of a large shipper of a given commodity, in giving him a lesser rate, you would immediately move the whole rate down to that level? A. I should call that a very good illustration of stable rates; what we call unstable rates are rates movable apparently up and down all the time, when one shipper gets one rate, and another shipper gets another rate.

Q. In the case of a shipper who had made a contract to deliver commodities at one of the Far Eastern ports based upon a high rate, he would not be in a very favorable position as against his competitor who might be seeking some 1674
business, who would get the benefit of a lower rate, which arbitrarily moved up and down to benefit a large shipper, would he? A. Not necessarily.

Q. Then in such a case, it would not be a very stable rate, would it? A. It depends on what you call a stable rate.

Q. It is very hard to understand when you generalize, as you have about the stability of rates. Assuming that you would give a large shipper a concession from the regular rates, or established rate, and then you would immediately move the rate down, and your general rates would all go down to the lesser rate; that would not be based at all upon 1675
the cost of doing business, nor the value of the tramp generally, would it? A. No.

Q. Will you state again so that I can get it clearly in my mind, just what you call the advantage to the small ship owner by reason of the conference agreement? A. It seems to me I testified to that this morning; I will try to go over it again, if I can, in the same words.

Q. What I wish now is to get my mind refreshed; I have not yet had this testimony written out; what was it you said about that; I have only got a note here of it? A. I said that 1676
it puts him in a great deal better position, especially if he has only one or more sailings, in the year, to operate in the business at all. Otherwise he would not know when he was coming on the berth again; he would not be able to do any forward business at all; none whatever, because no shipper would make a contract with him for one steamer to ship next December, when he might not turn up until January; and he is enabled to stay in that business by the conference system.

1677 Q. What company or companies did you have in mind that was in such a position before the conference? A. I think I was thinking particularly of the Prince Line.

Q. Were they in this business before the conference? A. Oh, yes.

Q. And they dropped out? A. No; they are in now.

Q. They are part of another line? A. Yes; one of these small component parts we were talking about this morning.

Q. Do you consider the Prince Line a small ship owner? A. No; it has only a small interest in this trade.

Q. They would be in a position by reason of their size and
1678 standing, to have such a position in the trade they wished, would they not? A. If they wanted to.

Q. Then this advantage that you speak of would not apply to them, because they were not a small ship owner? A. If they desired.

Q. You have given a general statement here as to the advantage of the small ship owner. From that I derived the impression that you were speaking of an owner that financially and otherwise was able to own only a few ships to compete with this trade, and not a very large concern like the Prince Line, that could inject themselves into any trade
1679 that they wished; so that it would not apply to that kind of an owner at all, would it? A. Yes, quite as much.

Q. Was not the Prince Line in a position to have as much of this trade as anybody, if they wanted to seek for it during their competitive days? A. It was not a question of being in a position; they did not do it.

Q. You have testified where the advantage is to a small ship owner? A. Yes.

Q. In that sense would you call them a small ship owner? A. They only have one or two sailings in that trade; that is
1680 all the interest they take in it.

Q. Have you any idea of the size of their fleet? A. Yes, in a general way.

Q. How many boats do you think they have, all told? A. Fifty or sixty, maybe.

Q. You do not call them a small ship owner, do you? A. They are, for the purpose of this trade.

Q. You would not call them a small ship owner? A. I do, for the purpose of this trade.

Q. You call them a small ship owner, and leave out "for

the purpose of this trade?" A. If you eliminate "for the purpose of this trade," no, I would not. 1681

Q. When you were speaking about that advantage of the conference, did you have only in mind this conference, or all conferences? A. I had in mind particularly this conference.

Q. You did not say that you did; you were asked by Mr. Burlingham what the advantage of a conference was; did you mean in giving that testimony to simply limit yourself to this particular conference? A. No; the same economic principles apply.

Q. That is the impression I got; if the same economic principles apply to all conferences, and you were at the particular moment referring to the small ship owners, that would not embrace the Prince Line, would it? A. I think so. 1682

Q. Was it your supposition that they did not want to use more of their tonnage for this trade? A. That is just it; they would not take a larger financial risk.

Q. What other small ship owners did you have in mind that would be benefited by conference, or who would not get discriminated against? A. All ship owners with a small interest in the trade. 1683

Q. Who were they besides the Prince Line, that went into this conference? A. All the partners in the American & Oriental Line would have a small interest. Some of the component parts of Mr. Barber's line would have a small interest; only a small interest.

Q. The American & Oriental Line is made up of a number of components? A. Yes.

Q. As set forth here in the petition? A. Yes.

Q. Could they not have formed themselves into a general line, a regular line, without the conference? A. Yes; they did so. 1684

Q. They did, did they not? A. Yes, they did.

Q. And maintained regular sailings, did they not? A. Yes, more or less.

Q. And that was before any conference was established? A. Yes.

Q. And it ran for a period of a couple of years; is that correct? A. Yes.

Q. The conference did not enable them to combine those

1685 component parts into a single line, did it; because they were established before that? A. That is right.

Q. Then it was not due to the conference that they were in any way able to get into the trade; all they had to do was to form some part of a general unit out of the component parts? A. That is how they entered, yes.

Q. Then when you are speaking of the advantages of the conference to small ship owners, you do not mean to say that it would exclude small ship owners who would get in and make one general line, from doing so, and having already this position in the trade, do you? A. No; but I said
1686 they would not stay in the trade, and I still think so.

Q. They stayed in it two years, did they not? A. They did.

Q. And went into the conference? A. They did.

Q. And when you testified this morning that an individual owner would not probably have the requisite capital to establish the regular service which you think would be for the benefit of the shipper, you referred then to this one single owner, did you not, and not to a combination of small owners who operated a regular line? A. That is right.

1687 Q. Whether an individual owner would be established in the Asiatic business, or in any business, and maintain regular service, would depend upon their size and means, would it not? A. Yes; and their willingness to risk their size and means in the trade.

Q. If an individual owner of sufficient means wished to enter the trade, he would have just as good a chance as any person who is in the trade, would he not? A. That is right.

Q. Then it is all simply a question of means, is it not? A. It is, entirely.

Q. Mr. Sparks, you remember this morning you gave us an
1688 illustration of the advantages to the shipper, using that of the Shanghai merchant. You remember that, do you not? A. Yes.

Q. Was his method of doing business any different before the conference than it was after the conference, using him as an illustration? A. I think now his method is more or less the same; but he had much greater difficulty in carrying on his business in that way.

Q. If I understand the evidence correctly, this morning and this afternoon, the number of sailings were practically

the same before the conference, or quite as good, as afterwards; they had varied sometimes, but there was very little difference in either the number or the regularity? A. They are very much better and have been for some time, than they ever were before the conference. 1689

Q. I am speaking of the first five years before the conference? A. I haven't any figures here; I cannot talk about that.

Q. Have you any figures or any information, any accurate information at all, as to whether the Shanghai merchant was in just as good a position with reference to these shipments being delivered at the time that he wanted them, before the conference, or after? A. No, sir, I haven't the figures. 1690

Q. Do you know whether or not the Shanghai shipper or merchant in that particular situation, was among those that made these numerous complaints that finally brought about the recommendation of this committee on January 4, 1910? A. No; I don't know whether it was or not.

Q. Assuming that the regularity of the shipments; that is, getting them within the time that he wished, the Shanghai merchant—if there was irregularity before that time,—he would be in the same position to complain as anybody else, would he not? A. I should say so. 1691

Q. And for just as good ground, according to your theory of the Shanghai merchant's necessities? A. He might, or might not.

Q. I understand, Mr. Sparks, that the rebate system of this conference eastward, of the eastward traffic was discontinued in 1911? A. I don't remember the exact date.

Q. Do you know what occasioned the abandonment of it in 1911? A. Yes, I have already testified to that; I think I was one of the first to insist upon its abandonment, as a means of raising revenues of the owners. 1692

Q. Do you remember just the time of the year that that was abandoned? A. It was in the wintertime, as far as my recollection serves me; either in December or January; and that is why I did not know the year before.

Q. Do you know whether or not it was adopted before or after January 13, 1911? A. I do not remember.

Q. What time in the winter was it that you say it was abandoned? A. It was either December or January; I don't remember which.

1693 Q. Of 1911? A. I don't remember which year, 1910 or 1911.

Q. It seems to me that the rebate system outward was abandoned on January 30th, 1911; you recall that time? A. January 30, 1911?

Q. That is what it says here; and this suit was brought on March 30, 1912. Was that in any way due to an opinion that you had received that the rebates were illegal?

MR. BURLINGHAM: That is objected to.

A. That had nothing to do with my suggestion.

1694 Q. Do you know whether or not the abandoning of the rebates was due to such a fact? A. I am able to testify to my own part, that it had nothing to do with my opinion on the subject.

Q. I am asking you this question, whether you knew that the abandonment of the rebate was brought about in any part by the fact that the conference, or some of its members, had received a legal opinion to the effect that the rebates were illegal outward? A. I don't know what influences the others; it did not influence me.

1695 Q. I am asking you whether you knew whether it was or was not the fact? A. I don't know.

Q. Do you know whether any such opinion was ever rendered to your principals or to you?

MR. BURLINGHAM: That is objected to.

Q. I don't remember whether we had any specific opinion on the subject, or not.

Q. Would you testify you did not? A. No, I will not; I don't remember.

Q. The westward part of the conference business still retains the rebate feature? A. So I believe.

1696 Q. Your idea was to abandon it so as to get a larger return for the owner, is that the idea? A. That is right.

Q. From that am I to infer that it was expensive to the owners to grant rebates? A. Certainly, very expensive; at that time we did not see any way of putting up the rates, so we abandoned the rebate.

Q. Did you know why the western rebates were not abandoned for the same reason? A. I don't know; I had no control over that at all.

Q. It was just as necessary for the owners to increase their earnings westward as it was eastward, was it not? A. Perhaps they put their rates up westward. 1697

Q. I am not asking you for the perhaps; I say, it was just as necessary for them to increase their earnings westward as it was for the conference to increase them eastward, was it not? A. Certainly.

Q. And yet they have not abandoned giving rebates westward? A. No; I am informed it is still in existence.

Q. You say you were the first to suggest that rebates eastward should be abandoned because of the expense? A. I think I was. 1698

Q. And did your principals agree with you on that? A. Evidently.

Q. Did the conferees also agree with you on that? A. Evidently, it was abolished.

Q. Did you also recommend to them that it would be also from an expense standpoint advantageous to abandon westward? A. No; I don't suppose we touched on that at all; it would not fall within our province.

Q. You were only interested in the eastward business? A. That is all.

Q. Was any suggestion made by any of them to you that the rebates were not expensive westward? A. No. 1699

Q. You have testified generally that pools are essential to conferences; you remember that testimony? A. Yes.

Q. And that it is impossible to maintain stable rates without pools? A. Yes.

Q. Mr. Sparks, you were a witness in the case of the United States against the Brazil Conference, were you not? A. Yes.

Q. And you are a party defendant in that suit? A. Yes.

Q. And you also testified in that suit that conferences were necessary, did you not, and gave your reasons? A. Yes. 1700

Q. Did you mention in the testimony given in that case that pools were necessary for any conference? A. I don't remember.

Q. As a matter of fact, you know, do you not, Mr. Sparks, that you never mentioned pools being necessary to a conference at all when you gave your testimony as an expert in

1701 that case? A. If I knew, I should not say I don't remember.

Q. Pools are not maintained in the western conference, are they? A. No; the pool was abandoned.

Q. So that in that particular conference pools are not necessary to them, are they? A. I have testified this morning that I think the conference will break up if there is no pool.

Q. And you think the western conference will break up because of a lack of pool, do you? A. Very likely.

Q. What makes you think that? A. They have already reached a partial breaking point.

1702 Q. You think they have? A. Yes.

Q. And had it reached the breaking point, or an approach to the breaking point, before the Brazil suit was brought by the Government? A. I don't remember when this suit was started, the Brazil suit.

Q. Assuming, Mr. Sparks, that you did not testify in the Brazil suit that pools were necessary to a conference, would you say that you had overlooked that in the testimony in that suit that you gave? A. I could not say anything about it, because I don't know whether I was asked or not.

1703 Q. You remember, do you not, that you were asked pretty generally about all the advantages of conferences? A. I think so, yes.

Q. Mr. Sparks, if I understood your testimony correctly this morning, your idea is that pools are essential to all conferences? A. Either essential or very desirable; it depends on how you look at it.

Q. I show you your testimony in the Prince Line case, otherwise known as the Brazil case; where you were interrogated as to the advantages of the conference, and I ask you whether or not at any time you stated that pools were neces-

1704 sary or essential to conferences generally? A. My evidence does not contain such a statement on the pages you refer to, pages 1000 to 1003.

Q. You have read that part of your testimony where you were interrogated by counsel as to the advantages of the conference, have you not? A. Yes.

Q. And in that you did not mention that pools were generally necessary to the conference? A. Certainly not.

Q. Were pools involved in the Brazil conference? A. At one time there was a pool.

Q. Abandoned when? A. I don't remember. 1705

Q. Quite a long time ago? A. Sometime ago.

Q. You remember, however, testifying in the Prince Line case, in answer to a question as to the reasonableness or unreasonableness of the conference, that among other things a pooling agreement undoubtedly was of service in compensating for the cost of service to the small ports? A. Yes; I testified the same thing this morning.

Q. You testified generally this morning, did you not, that poolings were necessary for conferences, and did not limit them at all to what you call the out ports or small ports? A. I gave them as one of the reasons in favor of pooling. 1706

Q. Let me understand you; outside of the cost of serving the small ports, poolings are not necessary; is that it? A. I think they are most essential and most necessary.

Q. Regardless of whether you serve the out ports or not? A. Yes; that is only one of the reasons.

Q. You would still think that a pooling agreement would be necessary to make the service successful? A. Yes, and most desirable.

Q. And that is true whether the conference embraces the service of the small ports or not? A. Yes; I think it is most desirable. 1707

Q. You mentioned this morning, however, that one of the advantages of the conference was that by the pooling you also equalized the expenses of serving the small ports at a loss? A. Yes.

Q. You remember that testimony, do you not? A. Yes.

Q. Could not that be entirely met by the conferees alternating their boats, or so arrange their schedule of boats that each in turn should serve the small ports? A. Yes, it could be done that way.

Q. So in that particular instance pooling would only be another device, and not the only device for equalizing that expense? A. It would be difficult to get the owners to agree. 1708

Q. It could be done, could it not? A. Yes; it could be done.

Q. So then, for the purpose of the out ports, pooling is not an essential, is it, because you could arrange in another way if the owners would agree? A. Yes.

Q. When you were testifying about pools, did you mean

1709 the pool outlined in these agreements set forth in the petition in this case? A. Pools in these two cases differ very widely, but the principle is the same.

Q. And in order that it may be brought to appear on the record clearly, what do you understand by a pool that would be efficient for the purpose of the conference? A. An equalizing of the advantages and disadvantages and net revenues arising from the business.

Q. In other words, all the earnings should be put into a pool, and after deducting all the expenses you divide pro rata among all the conferees; is that the idea? A. Yes; that
1710 is in general the result.

Q. So that if some part of the service should not be profitable it would be taken up by another part of the service that would be profitable; and that the unprofitable part should not fall upon any man's shoulders? A. That is right.

Adjourned to Tuesday, February 3, 1914, at 10:30 A. M.

New York, February 3, 1914.

1711 Met pursuant to adjournment.

Present—GILBERT H. MONTAGUE,
Special Examiner.

APPEARANCES:

(Same as before.)

THOMAS ASHLEY SPARKS resumed the stand.

RE-DIRECT EXAMINATION Continued by Mr. Baldwin:

Q. Mr. Sparks, reverting for a moment again to this insur-
1712 ance question; there are a number of lines, are there not, regular lines, that are operating from various ports in the United States to South America and the West Indies? A. Certainly.

Q. And they are not in the conference, are they? A. Some of them are not, I believe.

Q. As a matter of fact, are any of the lines known as the American lines that are operating in the South American trade, or the West Indies, in conference? A. I don't know which lines you refer to.

Q. Are there any of them that operate outside of what is known as the Brazil conference; are any of them operating from American ports to the South American ports and the West Indies in conference, that you know of? A. I am afraid I do not understand your question. 1713

Q. Do you know of any conference of ship owners operating in the trade between the United States and the South American ports, or the West Indies, other than what is known as the Brazil conference, that are in conference? A. I think there are some others.

Q. Who are they? A. I think the Plate lines are in conference; and I think some of the West Indies people are in conference. 1714

Q. Take the West India lines; what lines are engaged in the West India business from the United States ports? A. I have not got them at my fingers' end; there are a lot of them.

Q. Just name one of those lines, other than any of the lines that are party defendants, in what is known as the Brazil case, that are in conference in that business? A. I am not sufficiently acquainted with the subject to give evidence on it.

1715

Q. Do you know anything about the Munson Line? A. Yes; I know something about that.

Q. That operates from Gulf ports to the West Indies, does it not; and also to Central America and South America? A. They used to; I haven't followed them lately.

Q. Up until the time that you knew about it that was their field of operation, was it not? A. One of their fields, yes; there were many others.

Q. Do you know whether that is in conference with any other lines? A. I am not acquainted with their business.

Q. Have you ever looked up the question to know whether any of these lines that are engaged in the trade of South American and West India ports from the United States are discriminated against in insurance because they are not in conference? A. Not that I am aware. 1716

Q. Mr. Sparks, how were the outports served before the conference agreement was formed in 1904? A. Which outports do you refer to?

Q. You have testified generally to the outports; I am asking you a general question about it.

1717 MR. BURLINGHAM: You mean in this trade, do you not?

Q. Yes; in this trade? A. In a general way, I should say they were served by transshipments.

Q. You mean to say that the cargo from this country was carried, the commodities, to one of their general ports in the Far East and then transshipped upon some other line? A. That is right.

Q. Were the lines engaged in that business directly from these large ports to the small ports? A. Yes; a good many
1718 such lines.

Q. And were any one of the conference lines, or what became the conference lines, serving those outports before the conference agreement? A. They would not go there unless the freight offered was sufficiently remunerative to pay them for their call.

Q. I am not asking you that; I am asking you whether they did serve? A. I don't remember.

Q. Why do you say that they do not go there unless the trade offered was sufficiently remunerative if you don't remember whether they went or not? A. Because I am sure
1719 that was the case.

Q. How can you be sure of something that you don't know existed? A. (No answer.)

Q. Answer the question, please. A. Does that call for an answer?

Q. Yes, it does; the question is, how can you be sure of something that you don't know existed? A. I do not understand the question.

Q. You just testified a moment ago that you did not know whether any of the lines before the conference served those outports or not; but if they did, they would only serve them
1720 when they had remunerative cargo? A. That is my recollection of the condition at that time; that is some twelve years ago.

Q. That is the only answer you can make to that? A. Yes, sir.

Q. Did the conference immediately begin to serve those outports? A. I don't know when they began; they have been serving them with a certain degree of regularity since then.

Q. You seem to qualify the regularity; you say, "a certain degree of regularity;" that means less than regularly, does it not? A. Not at all. 1721

Q. These lines, then, do not purport to have regular service to the outports; is that it? A. There is not a regular cargo to carry.

Q. I am not asking you whether there is a regular cargo to carry. A. What is the question?

Q. I am not asking you whether there is a regular cargo to carry or not; I am asking you whether they go to these outports regularly, regardless of the cargo? A. They certainly would not go without cargo. 1722

Q. Then these lines only purport to serve these outports when they have cargo; is that it? A. Certainly; when there is a demand for it.

Q. That is precisely the same that would happen outside of the conference as in; is that correct? A. I think not.

Q. Dalny was an outport, was it not, prior to 1908? A. I don't remember when the big shipments began to Dalny; I think it was probably before that date; I think it was in the beginning of 1907.

Q. Prior to that time it was an outport, was it not, and not served by any of the conference lines regularly? A. I don't remember whether they went there or not. 1723

Q. Did any of your boats go there? A. I don't remember.

Q. You have testified here that it was a part of the intent and purpose of the conference lines to give a regular service and an adequate service to the shipper; do you remember now whether or not the United States Steel Products Company in about 1907 or 1908, or about that time, had any negotiations with the conference lines with reference to taking their steel products, for the purpose of building the Manchurian Railway? A. Yes, I think there were negotiations. 1724

Q. Is it not a fact that at that time you were not serving Dalny at all? A. I don't remember whether we were serving it at all or not; there was very little cargo prior to that time.

Q. Have you served Dalny since that time? A. From time to time.

Q. Have you served it regularly? A. When there is cargo offered.

1725 Q. And only when cargo is offered? A. Certainly.

Q. Is cargo offered pretty regularly, so that the service is fairly regular to Dalny? A. The cargo is very irregular.

Q. So that you have very irregular service? A. Certainly.

Q. Is it your idea that all the shipments to Dalny prior to 1907 were transshipments? A. I think very largely; I don't know; I cannot remember whether we ever went there; we may have done so once or twice.

Q. In order to serve these outports then as I understand your testimony, even the conference will not send ships there unless they have a sufficient cargo to make the voyage profit-
1726 able? A. I testified exactly the reverse of that.

Q. I am telling you the impression that I got from your testimony? A. I cannot help your impression.

Q. You have testified this morning, Mr. Sparks, that they did not serve the outports regularly, and only served them when it could be done—I think you used the words—when it could be done as a business venture? A. I did not say anything of the sort.

Q. How did you serve them, and under what circumstances? A. When the cargo offers.

1727 Q. Then do you stop at the outports regardless of whether or not you have a full cargo? A. Certainly; we never carry a full cargo for outports.

Q. Then you only take the outports cargo when there is some offered on a regular trip to the regular port; is that it? A. I do not understand what you mean.

Q. You serve regular ports, do you not, and you do not serve the outports? A. That is correct.

Q. And you do not serve the outports excepting as you are either going to or from the general ports; is that it? A. You mean that we do not send a specific ship to an outport?

1728 Q. Yes. A. Of course not.

Q. Then you take a cargo for the outport if it is offered, regardless of how much is offered, and stop there? A. It has to be a reasonable amount.

Q. What do you mean by "a reasonable amount"? A. It depends upon the port.

Q. What determines; you say that it "depends on the port;" what determines the reasonableness of the amount; what is it that guides you? A. It varies.

Q. Give us some idea about the variance, what it amounts to? A. Perhaps 200 or 300 tons. 1729

Q. Then in the event you do not have 200 or 300 tons offered, you would not stop there? A. It would go by transshipment.

Q. What actuated you in determining or fixing upon the amount of 200 or 300 tons as a standard? A. There has to be some limit; we could not go in with one package, and there has to be some limit as to the quantity we will go in for; somewhere in the neighborhood of 200 or 300 tons is approximately what we aim at.

Q. Has that ever been established by conference, or have you yourself done that? A. I think that has been agreed at agents' meetings. 1730

Q. If you were willing to serve the outports providing that you had cargo of this amount that you have mentioned, or more, why is it that you would not serve Dalny for the United States Steel Products Company; they had a very large shipment or shipments, did they not? A. Who said we would not?

Q. Mr. Lilly, one of the defendants in this case, has testified that you would not take it excepting at prohibitive rates? A. That is news to me. 1731

Q. You say that is not so? A. I do not say it is not so; I say it is news to me.

Q. Do you remember whether or not the Steel Products Export Company did offer you very large shipments, and that there were negotiations on the question of rates; do you remember anything about that? A. Yes; I remember something about the circumstances; they were negotiating through Messrs. Barber at that time, and Messrs. Barber thought they could control the business themselves, irrespective of the conference; and there was rather a mix-up about it, and finally the Steel Company got Bucknalls into the trade; that is my recollection of it. 1732

Q. Do you recall whether or not the conference lines were offered all the shipments to complete the Manchurian Railroad by the Steel Products Company? A. No; my recollection is we never did have an offer of the business.

Q. If Mr. Barber took it, it would be for the benefit of all the lines, would it not? A. That was our opinion; but at that time it was not Mr. Barber's idea.

1783 Q. Do you mean to say that the conference lines did not get an offer which they considered from the Steel Corporation in 1907 or 1908, to move their commodities to Dalny, for the purpose of completing the Manchurian Railroad? A. I don't recollect that they had any such offer.

Q. Do you say they did not? A. I say I don't recollect they had any such offer.

Q. Then do you know whether or not the conference quoted a rate of $5 a ton above the European rate? A. I have no such recollection.

1784 Q. You say there was some little controversy among the members of the conference because of the position Mr. Barber took; is that the idea? A. That is correct.

Q. That he thought that business belonged to his particular line? A. No; but he thought he could get it from the Steel Company for himself, I believe, at that time.

Q. For himself? A. Yes.

Q. And the conference should not participate in it? A. I think that was his contention at the time.

Q. Was he in a position to serve that outport himself for the purpose of the steel contract? A. I suppose at a rate

1785 he would have been glad to do it.

Q. Was he in a position to do it; could he have done it as a single owner? A. No doubt he could, and charter ships; he could not do it with his own ships.

Q. It all depends upon whether he was able financially to get the requisite number of ships, does it not, by charter? A. Almost anybody can charter ships.

Q. Regardless of whether they are financially able to or not? A. That is very much so.

Q. If that is so, then any person can serve these outports if the commodity was sufficient, could they not, by charter-

1786 ing ships to do it? A. If the quantity was sufficient, of course, and the rate was sufficiently remunerative.

Q. Why was it then, that the conference did not take the steel contracts, and that the Steel Company started their own line through Bucknall? A. My recollection is that the conference would have been very glad to have the business.

Q. At what price; at a price above the European rate? A. I don't remember what rates were being discussed.

Q. Have you any recollection about the rate that was quoted to the Steel Products Company at all? A. No.

Q. Whether it was or was not above the European rate? 1737
A. No; I do not think I knew what the European rate was.

Q. You never heard it discussed? A. I don't remember; it is a long time ago.

Q. Under this conference agreement, Mr. Sparks, how could Mr. Barber have taken that contract for himself? A. I do not think that he could.

Q. If he had taken it for himself, if there was any binding force in the agreement, the result would have to be pooled? A. We should have contended they did not belong to him, and we did so contend.

Q. He would have had to pool the results? A. That would 1738
have been our contention.

Q. That is, assuming that the contract had any binding force; that is right, is it not? A. I don't know anything about that.

Q. Under the agreement, it was the contention of the other conferees that if he got that contract, it inured to the benefit of the conferees? A. That is correct.

Q. And the results would naturally have to be pooled? A. They would.

Q. Mr. Sparks, you were interrogated yesterday with ref- 1739
erence to rebates, and among other things you testified that they were conditioned upon the shipper giving exclusive support to the conference line; you remember that, do you not? A. Yes.

Q. Among the disadvantages which you spoke of, of a rebate, you said among other things, that after paying out for years, the minute a competitor appears, rates become so demoralized that you are willing to give a shipper his deferred bonus and reduce his contracts, and give him low rates; and your protection is not worth a bag of shells. What particular instance were you referring to, to support 1740
that generalization? A. The advent of the American Manchurian Line.

Q. Any other? A. That was all.

Q. Did not the American Manchurian Line start solely because the conference lines would not give them a rate on a parity with the European rates; I mean by "them" the Steel Products Company; to complete the Manchurian contract, and therefore they organized through the Bucknalls what is known as the American Manchurian Line? A. I don't know why they started.

1741 Q. You disclaim any knowledge on that subject? A. I do.

Q. What demoralization did the organization of the American Manchurian Line bring about? A. They came into the conference.

Q. And did that demoralize the rate? A. It would have done so, if they had not come into the conference.

Q. Did it before they came into the conference? A. I don't recollect how long it was after they started, before they came in.

Q. Was it not quite some time after it was organized, before they did come into the conference? A. No; I think it
1742 was quite soon.

Q. Give us some idea about how long it was? A. I have no recollection.

Q. Was it a year? A. I don't remember.

Q. I will ask you this: was there any demoralization of rates between the time that the American Manchurian Line was formed, until the time it came into the conference? A. I cannot testify on that without looking it up.

Q. Do you remember whether the American Manchurian Line sought to come into the conference, or whether they were invited into the conference? A. I don't remember.

1743 Q. What other particular circumstance had you in mind when you made that general reference to the demoralization of the rates? A. That was the circumstance I had in mind.

Q. And yet you are not able to state now whether there was any demoralization of rates? A. I know that the rebates were paid.

Q. I am speaking now about the demoralization of rates, for that is what you testified to; you do not recall now whether there was any, do you? A. No, I cannot specify.

Q. You testified with reference to the importance of
1744 pools, that there were two aspects; one essential to the shipper, and the other to the ship; and among other things you said yesterday that it had not always been possible to maintain a stable tariff of freight, unless there is a pool; do you remember that? A. I beg your pardon?

Q. You said yesterday that it had not always been possible to maintain a stable tariff of freight unless there is a pool; do you remember that? A. Yes, that is true.

Q. They maintain a stable tariff of rates in the Brazilian conference, do they not, without a pool? A. Not entirely.

Q. Have they done it generally? A. Generally, yes. 1745

Q. You further stated that they began to cut here and cut there, and the shippers find out they are not absolutely safe, and there is always someone trying to undermine them. What circumstances had you in mind upon which to base that generalization? A. I have both the Brazil trade and the China trade in mind.

Q. As being affected by pools; is that the idea? A. As being affected by the lack of pools.

Q. What instance were you referring to in the China trade where this undermining has taken place? A. Messrs. Norton & Sons' line does not pool with the other lines. 1746

Q. They do not? A. They do not, in eastbound.

Q. They do westbound, do they not? A. They do, but they don't eastbound.

Q. Has that brought about this undermining that you have spoken about in the trade? A. From time to time, yes.

Q. To what extent? A. Quite considerably.

Q. In what instance; what do you refer to particularly? A. The particular case I have in mind at the moment, is the Insular Department contract.

Q. You mean the United States Government contract particularly, to the Philippines? A. I mean the Philippine government contract. 1747

Q. That is with reference to the sending of cargo from the United States to the Philippines, you mean, do you not? A. Yes.

Q. Under government control? A. Yes.

Q. In what sense has that brought about this undermining; what undermining has taken place? A. Rates have not been maintained.

Q. Do you know whether or not there were complaints made from time to time to your conference about the rates not being satisfactory, and you discussed these things in conference? A. I do not understand the question. 1748

Q. You say that the undermining was on rates; do you remember whether or not at various times with reference to these Insular or Government contracts, they were discussed in conference? A. Yes, they were.

Q. Does the American Manchurian Line, for which the Nortons were the loading agents, engage in this Insular trade? A. They have the contract now, yes.

1749 Q. And have they always had it? A. No.

Q. Did they get it because they made a better rate? A. They got it because they cut the rate.

Q. And the other lines would not cut; is that the idea? A. That is correct.

Q. Is there any other instance that you have in mind where this undermining took place? A. Not at the moment.

Q. Do you remember when it was that the American Manchurian Line was able to get that contract by quoting a lower rate? A. They have done it twice now; for two years each time.

1750 Q. For two years each time? A. Yes.

Q. You mean that they made a contract with the Government for a period of time?

MR. BURLINGHAM: Q. For two years each time? A. Yes.

Q. Did you all have an opportunity to bid on it? A. We bid on it.

Q. You knew that they were bidding, did you not? A. Yes; we did; we did not know their rate.

Q. The last four years then, we will say, from 1910 on,
1751 the American Manchurian Line has been able to get that insular business because they quoted a lower rate; is that it? A. That is not correct; they had it for two years, ending I think the first of last July; and they took it again for two years.

Q. Then we will say up until 1911; who had it? A. I think that is the period covered by the contracts that I have given you here.

Q. Can you not state what they are? A. I can look it up for you.

1752 Q. Have you any recollection about it offhand, that you can state what it is? A. My recollection offhand is that we had it up until 1911.

Q. You mean to say that you individually, alone, or that they were joint contracts? A. My recollection is we made the contracts for joint account, for the rest of the lines.

Q. When the American Manchurian Line were able to get this contract we are speaking about in 1911, you say that at that time you knew that they were competing, but did not know that they were going to cut under the rate; is that right? A. That is right.

Q. When the contract expired by its terms in 1913, did you again bid? A. We did. 1753

Q. Did you have any conference about the rate? A. Yes; we agreed to bid the tariff rate on it.

Q. And again the American Manchurian Line went in and violated that understanding; is that it? And bid less than the tariff rate? A. I don't know whether you would call it violating an understanding; they simply took no notice of our position at all, and quoted their own rate.

Q. Did you not testify a while ago that they did cut in 1911, under the tariff rate? A. They cut our rate, yes.

Q. Was that the tariff rates? A. I think we bid tariff on that occasion; I am not quite sure. 1754

Q. And you are sure that they got the contract for less than the tariff rate? A. Yes.

Q. Mr. Sparks, did not the Manchurian Steamship Company have the contract for the Insular Department in 1908? A. I think not.

Q. Do you wish to qualify your evidence at all with reference to the time that the Manchurian Company took over that business, the insular business, under contract? A. To this extent; that it was quite evident from the contracts you show me that up until 1911 both the conference lines and the Manchurian line had a contract with the Insular Department; subsequently the contract has been entirely with the Manchurian Line. 1755

Q. That is to say, in 1911? A. Yes.

Q. Do you remember whether or not the Manchurian Company's rate was the same as that charged by the conference rate in these contracts from 1908 to 1911? A. As far as my memory serves me it was the same.

Q. You testified a moment ago, Mr. Sparks, that they got the exclusive contract because they cut the rate; and when you testified about that, you mean they got the exclusive contract in 1911? A. Yes. 1756

Q. And not the part contract in 1908 by cutting the rate; that is right, is it not? A. Yes; that is as I understand it.

Q. I have before me here a copy of the 1911 contract, made with the Manchurian Line, and on comparing it with the 1908 contract, I find that the rates were precisely the same? A. That is correct.

1757 Q. For instance, for the requisite number of tons, we will say:

From	2	to	4	tons	.....		$1.25	per	ton
"	4	to not over	6	tons	.....		3.75	"	"
"	6	"	"	"	8	"	.....	6.00	"	"
"	8	"	"	"	10	"	.....	10.00	"	"
"	10	"	"	"	12	"	.....	12.50	"	"
"	12	"	"	"	15	"	.....	16.00	"	"
"	15	"	"	"	20	"	.....	20.00	"	"

Ostensibly that is the same rate that was charged in 1908?

1758 A. That is correct.

Q. Where did the cutting come in? A. They renewed the contract at the same price on a much higher market.

Q. You are referring now in your testimony to the higher market; you testified that they got the contracts because they cut your rate? A. They did.

Q. And nothing was said about a market? A. They cut our rate.

Q. In what sense; just explain that now? A. We bid I recollect, tariff; I don't know what the tariff was then, $8

1759 or $9 or $10; something like that; they agreed to renew the contract at the old basis in spite of the fact that the market had advanced very materially.

Q. Had you advanced your rates? A. We advanced our asking rate, yes.

Q. That was a general advance by all of the conferees? A. Yes.

Q. And did you change your printed tariff to meet the advance? A. It probably had been changed long before that; you see, the previous contract was for two years.

Q. Were you renewing any contracts or making any con-

1760 tracts at that time with any people for less than what you call these advanced rates or market rates? A. I don't recollect.

Q. Were you making any less than the tariff rates at that time? A. I don't recollect.

Q. What about the Steel Company contracts; were you making those at less than tariff rates at about the same time? A. I don't recollect whether it was about the same time or not.

Q. Do you remember making it? A. No; it has been introduced here as a contract, but otherwise I have no knowledge of it. 1761

Q. In 1911, when you bid for this insular business, did you bid at that time? A. Yes.

Q. Did you bid the regular tariff rates as published or printed? A. That is my recollection; I am not quite sure; I think that it was tariff.

Q. Did you participate in making a bid to the Government for these shipments yourselves? A. I don't know whether my firm bid, or one of the others.

Q. You were more or less familiar with the subject matter at the time, were you not? A. Yes. 1762

Q. Are you able to state about the volume of this insular business per year? A. I think it is 300 or 400 tons a month, probably; somewhere in that neighborhood; perhaps a little more.

Q. What does it consist of mostly, if you know? A. All kinds of supplies.

Q. How often do those shipments go out; monthly? A. There usually is a shipment on each ship.

Q. That is about once a month, is it not? A. Twice a month. 1763

Q. When I interrogated you a moment ago, Mr. Sparks, and quoted these rates of $1.25 per ton up to $21 per ton, that was a special rate, was it not; those particular rates applied to some special cargo, did it not? A. Yes; they are the arbitraries for heavy lifts.

Q. The regular rate then, under this contract in 1908, was $6 a ton, was it not? A. That is my recollection.

Q. And it was the same in 1911? A. That is correct.

Q. Do you know what the quoted rate was, or what the rate that you bid in 1911 was? A. I think we bid tariff, whatever our tariff was; but I am not competent to give that evidence. 1764

Q. Can you ascertain about that? A. Very easily.

Q. If the insular shipments aggregated 300 tons a month and there were two sailings per month, that would amount to about an average of 150 tons a sailing, would it not? A. Yes; I said there were three or four hundred tons a month; it may be a little more.

1765 Q. As a matter of fact, the amount of freight then for each sailing would amount anywhere to from $900 to about $1,200, would it not, at $6 a ton, according to the exact number of tons that went? A. Yes, your arithmetic seems to be correct.

Q. That is considered a pretty good contract to have, is it not? A. Only moderate.

Q. It is larger than such firms as the Singer Company ships every month, is it not? A. I don't know what their volume is.

1766 Q. I notice that yesterday you testified, among other things, with reference to the advantages of pools; that "when we have a pool, the boat on the berth takes everything that offers, irrespective of whether it is high class or low class freight; looking only to get a proportionate division of dense and light freight." A. Yes.

Q. Would that situation only obtain in cases where you had pools? A. Yes.

Q. Do you not take everything that comes in the South American or the Brazilian trade, in the conference in which you are a party, and in which there are no pools? A. We

1767 do at the present time, because we are very short of freight.

Q. You have been doing that for a number of years, have you not? A. I do not think that is quite correct.

Q. How long have you been doing it? A. Ever since we have been short of freight.

Q. That does not indicate anything, whether it is a year or two years or four years, or how long it is? A. During the last eight or nine months, perhaps.

Q. Did you do it before that? A. I believe our freight man chooses his freight wherever he can.

1768 Q. Did you not testify in the Brazilian conference suit that that was one of the advantages of conference; that everything that was offered on the berth was taken? A. So it was.

Q. And in that conference you did not have pools? A. That is true for a certain length of time.

Q. How long has it been since you have not had pools in that conference? A. I don't remember the date that it was abandoned; I think it was about June of 1909.

Q. After the pools were abandoned in that conference in 1909, did you refuse then to take the freight that was offered?

A. No; I think at that time we were very short of cargo, too. 1769

Q. Were you in 1910 short of cargo? A. I don't recall about 1910.

Q. Did you not testify in that suit also, how the rates went up, because there was a great demand for tonnage, and there was not a sufficient supply to meet the demand? A. In 1910, I don't recollect that.

Q. Yes, that was in 1910 and 1911? A. I don't recollect that.

Q. Didn't you testify this time began in 1910, and extended over 1911 and 1912? A. Yes; I think that is about 1770 when it began.

Q. Did you take whatever freight was offered in 1911 and 1912? A. I think during those years our man picked and chose as far as he could.

Q. You say your man; you mean your own particular man, on your own line? A. Yes.

Q. How about the other conference? A. I guess they did the best they could, too.

Q. So then in the absence of pools, you do not think the shipper has the advantage of having his commodity offered regardless of whether it is dense or light? A. I do not think 1771 that he gets the same advantage out of the conference, as he does when there is a pool.

Q. Then you think that the Asiatic conference is better for the shipper by reason of the fact of pools, than the Brazilian conference that has not any? A. Yes, I do; and I think the China conference would be still better if all the lines pooled.

Q. I am speaking now about the shipper? A. Yes.

Q. You do not have pools now, as I understand it, in this present conference eastward, do you? A. Oh, yes, we do. 1772

Q. You remember, do you not, of testifying in the Brazilian case generally about the advantage of conference, and stating among other things that it was of advantage to the shippers, because their freight was taken regardless of its being light or dense, or its quality? A. I don't remember that particularly.

Q. You were interrogated yesterday about the history of this conference, and how it started; I would like to ask you whether you were consulted by the owners in Europe about

1773 the terms of the conference, or what should be in the agreement? A. Yes; I made a visit to Europe on purpose to discuss it with them.

Q. Then you were present when those meetings took place? A. I was.

Q. You also testified yesterday, that in your judgment the business should be in the hands of a number of men united, rather than in the hands of any one particular man; did I get that right? A. That is perfectly correct; that is my opinion.

1774 Q. And it has been the policy of this conference, has it not, that as soon as one person appeared who was a competitor, you immediately would get rid of him by buying him out, or taking him into the conference? A. There has only been one case, and that was the Manchurian Line, and that was taken into the conference; I don't recollect any buying out.

Q. Did not the American Oriental Line also come in, in the same way? A. Yes, that is true; I forgot that; they came in very soon after the conference was formed.

1775 Q. So it has been the policy of this conference, as soon as any person was strong enough to be a real competitor, to take him in; is that correct? A. Yes; you can get into any conference, if you are strong enough.

Q. It all depends on your strength, does it not? A. That is right.

Q. In other words, it depends upon whether you have the means to put up a real good fight to get business; and if you have you can get in; is that correct? A. That is correct.

By Mr. Montgomery.

1776 Q. I understood you to say yesterday, Mr. Sparks, that one of the advantages of this conference scheme was that where there were large shipments, the conference chartered steamers and divided the loss on these charters; is that right? A. That is correct.

Q. Why should there be a loss? A. There need not necessarily be a loss; but there usually is, for the reason I testified yesterday.

Q. And what was that? A. That the extra demand usually comes when trade is active, and when tramp rates are very high, and therefore charter prices are very high.

Q. Why should the conference come in and do business at a loss; why not simply leave the shipper to charter in a regular charter market? A. It is not their policy; their policy is to take care of the trade. 1777

Q. That is, the policy of the lines? A. Yes.

Q. The policy of the lines is to take care of the trade at a loss? A. If necessary, even at a loss.

Q. For the large shipper? A. For any shipper.

Q. You do not charter boats to carry cargo for small shippers at a loss, do you? A. The cargo of the small shipper might go on the chartered boats, certainly.

Q. Some of it? A. Yes. 1778

Q. Wherever you charter a boat at a loss, the bulk of the cargo in that boat is for some large shipper, is it not? A. Not necessarily.

Q. Under what circumstances would you charter a boat to carry cargo at a loss, when the bulk of it was not made up by some particular shipper's cargo? A. If the berth was very active, and there was more cargo for the berth boats then the boats loading at that time at the berth could carry, the lines would charter a steamer and take care of it.

Q. At a loss? A. Yes, if necessary.

Q. Do you know of an instance where either your boats or any one of these chartered lines have ever chartered a boat and carried a cargo at a loss? A. I should be very glad to look up the boats for you. 1779

Q. Do you recall an instance where that has been done? A. There were some boats chartered under those circumstances; I will venture the *Jeseric*.

Q. When was that? A. In 1906 or 1907, somewhere in there.

Q. Name the sailing, if you can, Mr. Sparks? A. I cannot tell you; she sailed several times; on one of those sailings, the *Jeseric*, I venture to state, met a loss, and she was chartered by the pool as a whole. 1780

Q. What cargo did she carry on the trip where she made this loss? A. I don't remember; I shall be very glad to submit the manifest.

Q. Did she not carry a large bulk of cargo for the Steel Company? A. She might have.

Q. Well, that would not be a case where the cargo was

1781 made up of shipments of small shippers that you are trying to benefit? A. Not if she carried a full cargo of steel, no.

Q. You never do carry a full cargo of steel, do you? A. It has been done, yes.

Q. Seldom, is it not? A. Seldom, if we can help it, of course.

Q. On the other hand, when you chartered a number of steamers to the Steel Company, it was understood there would be a loss on all that you chartered, was it not; six of them in one year, to the Steel Company; and the conference divided that loss? A. Yes, I think there was something of
1782 the sort. We had nothing to do with it, but I think there was an arrangement of that sort.

Q. By which the conference divided the loss of those charters? A. If there was a loss; I don't know whether there was; I never saw the result of it.

Q. And the reason was, you wanted to prevent that cargo going to some competitor; is that correct? A. I don't know; I told you I did not have anything to do with the arrangement for those six steamers.

Q. Can you imagine any other reason for making such an
1783 arrangement as that? A. I cannot imagine any reason for making it.

Q. Then this *Joseric* that you spoke about, is the only instance you can remember,—and that is not an instance; can you remember any instance when there was a large amount of cargo for some very large shipper, whom you were trying to protect and take care of, where loss has been made on a joint charter? A. I don't remember the results; but take the *Rutherglen* and the *Livingstonian*.

Q. When did the first one of these sail? A. I don't remember; many years ago.

1784 Q. What did they carry? A. I suppose everything.

Q. Did they not have a large part of their cargo made up of a steel shipment or an oil shipment? A. I do not suppose any boat goes out without a large parcel of steel; perhaps for that matter, also a large parcel of oil.

Q. And the reason for putting those boats on the berth, or chartering those boats and putting them on, is that you wanted to prevent large parcels of freight offering themselves to some competitor; is that correct? A. That might be.

Q. And where that element would be absent, the conference would not be chartering boats at a loss, would it? A. I do not see why not; if the cargo was offered, they would take care of it. 1785

Q. The small shipper is hardly in a position to put on a boat himself? A. Certainly not.

Q. And the Steel Company and the Standard Oil Company are? A. That is true.

Q. And is it not true that you charter a boat even at a loss to prevent a boat of the Standard Oil Company or the Steel Company taking a full cargo out there even? A. Certainly not true of the Standard Oil Company. 1786

Q. It has been at times, has it not? A. Never.

Q. It has been with the Steel Company, has it not? A. We may have carried more steel than we wanted, yes.

Q. And is not that the only purpose that you can imagine for that charter, for standing a loss on those six charters to the Steel Company? A. I don't know anything about that transaction.

Q. You knew it was done; can you imagine any other reason for it? A. I cannot imagine any reason for it.

Q. In this outport business, Mr. Sparks, in the absence of conference, would not the tendency be for small ship owners to serve the outports? A. The tendency for what? 1787

Q. For the small ship owners and small vessels to go to outports and serve them? A. I do not understand what you are getting at.

Q. You have testified that the conference helps outport business and service? A. Yes.

Q. If there were no conference, would not there be a tendency for the large vessels to go to the large ports, and for the smaller vessels and small ship owners to take in the outports? A. No; there would be less likelihood of the small shipper only going to the small one than the large one; because the small ship owner cannot afford the loss that would result. 1788

Q. Are you familiar with the operations, for instance, of the Dollar Steamship Company in the Far East? A. Not in the least.

Q. You don't know then, that that company serves the outports and that it is entirely independent of the conference? A. I have no knowledge of its business.

1789 Q. Mr. Sparks, you testified about the advantage to the shipper of making interchangeable contracts with the lines; do you mean by that, time contracts? A. Any kind of contract that is available on more than one line.

Q. As a matter of fact, there are a large number of shippers to the Far East, that do not have time contracts, are there not? A. Quite a lot.

Q. For instance, the American Trading Company is a very large shipper, is it not? A. I think so, yes.

Q. They are not under any time contracts, are they? A. Not as far as I know.

1790 Q. The China-Japan Company are very large shippers, are they not? A. Yes.

Q. And they do not have any time contracts? A. They have lots of contracts of one sort and another.

Q. Time contracts, I am speaking of? A. Perhaps you will describe time contracts to me.

Q. Don't you understand what I mean by time contracts? A. I testified that they have all sorts of contracts; they have contracts for shipments of 6,000 bales of domestics for six months; what do you call that?

1791 Q. I call that a quantity contract, and so do you.

MR. SPOONER: Both time and quantity.

THE WITNESS: How do you know what I call it?

Q. Because I think we have talked about it before? A. We have, a great many times, and we never seem to get down to what these things are.

Q. I call a time contract, and it is my understanding that you call it so,—a contract for all a shipper's shipments during a given period? A. You sometimes call it an exclusive contract; I wanted to find out what you are talking about.

1792 Q. Adopting my definition of a time contract, whether it is yours at present or not,—the American Trading Company, for example, do not have a time contract, do they? A. I think not.

Q. Nor the China and Japan Trading Company? A. I think not.

Q. And they are very large shippers, are they not? A. That is right.

Q. Of all kinds of goods? A. That is right.

Q. And they get along first rate, without any of those contracts, do they not? A. Yes. 1793

Q. How do they book their stuff? A. They book it through a broker from time to time, as it suits their convenience.

Q. And they take it for a specific steamer, or for sailing within a given time, do they not? A. One or the other.

Q. About these cotton piece goods that you have testified concerning, and the necessity of the regular service for those; as a matter of fact, a good many of those go by the Pacific route, do they not? A. I believe they do.

Q. Rather more than by your route; is that correct? A. I have no figures, but I rather think not. 1794

Q. Does the American Trading Company ship cotton goods? A. I think they do, in a minor degree.

Q. Do they go by the Pacific route or by your line? A. I don't know.

Q. You do not contend, do you, Mr. Sparks, that there have been two sailings a month regularly in this conference? A. I do not think there ever has been as few as two sailings a month.

Q. You do not mean there have not been months in which there have not been less than two? A. I cannot carry my mind back over every month that has been covered by this conference; but I should think it is exceedingly doubtful if there were ever less than two. 1795

Q. You don't know, do you, Mr. Sparks, whether shippers have relied on those sailings and have been unable to get their goods shipped to the Far East in time to meet the requirements of their contracts? A. No; I don't know of any such case.

Q. Mr. Sparks, you know, do you not, that in shipments via the Pacific, the time of arrival is guaranteed? A. No.

Q. You don't know that? A. No; do you? 1796

Q. Yes; you do not guarantee any time of arrival, do you? A. We do not, under any circumstances.

Q. If the sailings are regular, why do you not do that? A. Because there are 15,000 miles of water between here and the Far East.

MR. SPOONER: And the water is somewhat irregular?

THE WITNESS: Somewhat, yes.

1797 Q. There are a great many miles of water between San Francisco and the Far East; quite a few?

MR. BURLINGHAM: There is no question to answer.

Q. As you understand it, are there not? A. There are.

By Mr. Baldwin:

Q. In your cross-examination yesterday, in response to a question by Mr. Kirlin, which was to the effect that unrestricted competition might result in the carrying business falling into the hands of the stronger ones, while the selling
1798 business so far as the shipping side is concerned, would also be likely to fall into the hands of the stronger merchant, to which you answered that is undoub[illegible]v true; what particular competition, and in what c[illegible]ce did it occur, that such a condition actually arose [illegible]ch you could make this generalization? A. I [illegible] of any place where it arose.

Q. Then this is just a sort of [illegible]ept of yours that might arise from this situation; is t[illegible] the idea? A. It would have arisen unless the conference had been formed.

1799 Q. Did it arise in the Far Eastern business before the conference in 1904? A. No; that is why the conference was formed, so that it should not.

Q. Did it arise before that time? A. It did not.

Q. Your generalization was not based upon any specific events or happenings, was it, in this Far Eastern trade, before the Conference? A. No.

Q. Do you remember whether or not prior to the making of the present Brazilian Conference, there was a period of about a year of unrestricted competition? A. Yes; I do not think it lasted a year, by the way.

1800 Q. Very nearly a year? A. Yes.

Q. Had it happened then, the situation you said that would arise? A. No.

By Mr. Montgomery.

Q. These tariffs that I show you, were produced by you, Mr. Sparks, yesterday? A. Yes.

MR. MONTGOMERY: I offer in evidence the tariff marked on the inside page "Freight rates and Arbitraries," dated March 1st, 1912.

Received in evidence and marked Petitioner's Exhibit 36. 1801

MR. MONTGOMERY: I also offer in evidence a typewritten tariff dated December 15, 1913, on the last page.

Received in evidence and marked Petitioner's Exhibit 37.

By Mr. Montgomery.

Q. These letters that I show you, Mr. Sparks, were produced by you yesterday? A. Yes, an original and two copies.

1802

MR. MONTGOMERY: I offer this letter in evidence.

Received in evidence and marked Petitioner's Exhibit 38.

MR. MONTGOMERY: I offer this letter in evidence.

Received and marked Petitioner's Exhibit 38-A.

MR. MONTGOMERY: I offer this letter in evidence.

Received in evidence and marked Petitioner's Exhibit 38-B.

By Mr. Burlingham.

Q. Mr. Sparks, you were asked yesterday about the insurance rates on cargoes carried in vessels in regular lines and in conference, and outside vessels? A. Yes. 1803

Q. And you instanced the case of the *Romera* and the *Muncaster Castle?* A. Yes.

MR. BURLINGHAM: I offer in evidence from Lloyds Register an excerpt showing the tonnage of those two vessels, their dimensions, and the date of their construction. I have taken it from the Lloyds Register here.

MR. BALDWIN: I object to that on the ground it is not competent or material. 1804

MR. BURLINGHAM: You do not object to the form of the proof?

MR. BALDWIN: If you say you got it from Lloyds, I suppose that is all right.

Received in evidence and marked Defendants' Exhibit 4, reading as follows:

1805

	Gross	Built	Long	Wide	Deep
"*Muncaster Castle*	4757	1906	400	50	18.7
Romera	4949	1909	400.2	52.2	27.3"

Q. Is the difference in insurance on cargoes carried on conference boats and carried on tramps, reflected in the freights paid on such cargoes; and if so, how?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial.

A. I do not know of any difference on conference boats,
1806 but there is a difference on regular liners.

MR. BALDWIN: I move to strike that out, on the ground that how rates are made up would depend upon the various items that enter into it; and to say it is reflected is a mere generalization, and carries with it nothing; it gives us no information, and it is too broad and too general.

Q. Take for instance a shipment of bales of cotton from the United States to a foreign port; what difference is there in the rate on the tramp, and the second class, and the first
1807 class liner?

MR. BALDWIN: If he knows.

A. Yes, I know; in the regular cotton trade, from the Gulf to European ports, freights are quoted sometimes two ways, and sometimes three ways; there is one rate for a first class liner; there is another rate for a second class liner; and a third rate for the tramp; the first class liner rate is higher than the second class rate; the second class liner rate is higher than the tramp rate.

Q. And what relation has that to the insurance rate? A.
1808 That allows to the shipper the difference between the insurance on the different vessels.

Q. You were asked yesterday some questions about the way Shewan, Tomes & Company do business in the East? A. Yes.

Q. With regard especially to a store; will you tell us how they do their business? A. I have never been in the East, Mr. Burlingham; I can only tell you how the orders are received here.

Q. How are the orders received here? A. In the form of 1809
cable or mail indents, to be filled and shipped at a certain time.

Q. Yesterday you stated that after the conference came into existence, the freight rates were higher; why were they higher? A. Because they had sunk to an unprofitable and even ruinous level, before the conference was formed.

MR. BALDWIN: I ask to have that stricken out, because it is a characterization; if he wants to give a difference of rates, that is one thing; we certainly should have the opportunity to go into all items that 1810
make up the difference in the rates.

Q. How would you define an outport? A. A port that was not regularly visited by the lines.

Q. Was Dalny ever an outport? A. It was before the reconstruction of the Manchurian Railway.

Q. And when was that? A. I think it was in 1907, or thereabouts.

Q. You say that under the conference, you would consider a shipment of 200 or 300 tons to be about the limit that you would require in order to visit an outport; would 1811
that pay for visiting the outport?

MR. BALDWIN: I object to that as too general, and asking for an opinion. The facts concerning the cost of serving the port ought to be on the record; he should not be allowed to hazard an opinion on that.

A. According to the owners' advices, it does not pay them.

MR. BALDWIN: I ask to strike that out, because on its face it is secondary evidence, and not first hand knowledge on his part at all.

1812

Q. In answer to certain questions of Mr. Montgomery, you spoke of the regular lines wishing to take care of the trade; and his questions were directed principally to the matter of steel products and oil; what do you say as to this matter of taking care of the trade, when there is an excess of cargo in the market furnished by your regular customers here; what do you do? A. I know that it is the desire and intention of every one connected with the conference to take

1813 care of all the business, irrespective of whether it is for a large shipper or a small shipper.

Q. And whether a loss occurs in the particular instance or not? A. Certainly.

By Mr. Baldwin:

Q. Yet if your shippers should offer you commodities for the outports, that would not aggregate say 200 or 300 tons, you would discriminate against them and give space to other shippers who had a commodity for the regular port, would you not? A. Not at all; we would carry their com-

1814 modity to the regular port, and transship it for them.

Q. It would cost more money, wouldn't it? A. It probably would.

Q. Do I understand you, Mr. Sparks, to say that the carrying rate is higher on the first class cargo than on the second class; and higher on the second class than on the third class? A. Than the tramp I said; on cotton.

Q. And that the insurance rate is less on the first class than the second class; and on the second class than on the tramp; is that right? A. That is correct.

1815 Q. Then the insurance rate depends very largely upon the time taken, does it not? A. Partly.

Q. In other words, if you shorten risk you shorten the rate, do you not? A. Partly.

Q. The first class liner usually goes in less time than the tramps, does it not? A. Usually.

Q. So that would in a way explain the fact that insurance upon commodities going in a first-class liner, would be at a lower rate than going upon a tramp, would it not? A. Yes; the insurance companies give preference to the risks on regular line boats; they find it more satisfactory.

1816 Q. You have testified here that in some way the insurance rate was reflected in the tariff rate, by the illustration of the first-class liner and the second-class liner and the tramp. What I want to be apprised of is whether or not the insurance rate is not always dependent more or less upon the length of the voyage, assuming the ships were equal in everything excepting speed: would not the insurance rate be less on the faster boat than on the slower boat? A. Not necessarily.

Q. It often happens, does it not? A. It often happens that 1817
a better boat would not be accorded the same privileges that a poorer boat would have that is in a regular line.

Q. You make your distinction as being connected with a regular line, independent from the fact that it is connected with the conference? A. Certainly.

By Mr. Burlingham.

Q. Take these two boats as an illustration, the *Romera* and the *Muncaster Castle;* is there any difference in speed there? A. I don't know about their respective speeds.

Q. Take the ordinary White Star boats for instance, that 1818
cross the Atlantic here; is there any difference in the rate?

MR. BALDWIN: How does he know that, unless he is connected with the White Star?

Q. Take the case of the Holland-American, one of their fast boats and one of their slow boats crossing the ocean; a passenger steamer like the *New Amsterdam* and the *Rotterdam;* and also a slower one like the *Noordam;* is there any difference in rates?

MR. BALDWIN: I object to that. 1819

A. One rate applies to all lines' boats; the insurance company makes a rate for one line; and as long as it is their boat, my understanding is that same rate applies.

Q. You are agents of the Holland-American Line? A. Yes.

By Mr. Baldwin.

Q. Is it true, Mr. Sparks, that these large conferences, by reason of their size and the number of ships involved and the importance of their business, have been able to get ad- 1820
vantageous rates by reason of that alone? A. What rates are you speaking of now?

Q. Insurance rates? A. It has had nothing to do with the lines; the insurance people make the rates for themselves.

Q. Do you mean to say that they do not sometimes make more favorable rates on account of the size and the respon-

1821 sibility of their customers? A. That no doubt is part of the risk.

Adjourned to Wednesday, February 4, 1914, at 10:30 o'clock A. M.

New York, February 4, 1914.

Met pursuant to adjournment.

Present—GILBERT H. MONTAGUE, Special Examiner.

1822 APPEARANCES:

(Same as before.)

Adjourned to 2 P. M.

Met at 2 P. M.

MR. MONTGOMERY: I find that Petitioner's Exhibit 16 for identification was offered in evidence on December 30, 1913, but for some reason or other was not marked, and I now request that it be marked in evidence.

1828 Marked Petitioner's Exhibit 16.

IT IS STIPULATED that Defendants' Exhibit 4 shall be withdrawn, and that the following shall be substituted therefor:

	Gross	Built	Long	Wide	Deep
Middleham Castle	4534	1910	380	50	26.9
Romera	4849	1909	400.2	52.2	27.3

IT IS FURTHER STIPULATED that the testimony of Mr. Sparks with regard to the steamship *Muncaster Castle* shall be read as referring to the

1824 steamship *Middleham Castle*.

MR. MONTGOMERY: I offer in evidence list of steamers of all the Conference lines, the American-Manchurian line being in a separate list, with the names of the steamers and the dates of sailing and the ports of destination from 1905 to 1913 inclusive, as to all the lines except the American-Manchurian, the American-Manchurian being from 1907 to February 1, 1914, inclusive.

Marked Petitioner's Exhibit 39. 1825

MR. MONTGOMERY: I offer in evidence Petitioner's Exhibit 23 for identification.

Marked Petitioner's Exhibit 23.

MR. MONTGOMERY: I offer in evidence Petitioner's Exhibit 32 for identification.

Marked Petitioner's Exhibit 32.

MR. MONTGOMERY: I offer in evidence Petitioner's Exhibit 32-A for identification.

Marked Petitioner's Exhibit 32-A.

MR. MONTGOMERY: I offer in evidence Petitioner's Exhibit 33 for identification. 1826

Marked Petitioner's Exhibit 33.

MR. MONTGOMERY: I offer in evidence Petitioner's Exhibit 34 for identification.

Marked Petitioner's Exhibit 34.

MR. MONTGOMERY: I offer in evidence Petitioner's Exhibit 2 for identification.

Marked Petitioner's Exhibit 2.

MR. MONTGOMERY: I offer in evidence Petitioner's Exhibit 3 for identification.

MR. MACLAY: I object to so much of Petitioner's Exhibit 3 as relates to the westward traffics on the ground that it is immaterial, irrelevant, and not within the scope of the issues raised in the pleadings. 1827

Marked Petitioner's Exhibit 3.

MR. MONTGOMERY: I offer in evidence Petitioner's Exhibit 4 for identification.

MR. MACLAY: I object to so much of Petitioner's Exhibit 4 as relates to the westward traffics, on the ground that it is immaterial, irrelevant and not within the scope of the issues raised in the pleadings.

Marked Petitioner's Exhibit 4. 1828

Petitioner Rests.

IT IS HEREBY STIPULATED AND AGREED that the defendants' time provided for in the original order to put in their case, to wit, sixty days from the date of the closing of the Petitioner's case, shall begin to run from this date.